

## AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP1/2019**

### DETERMINATION

**WHEREAS** an appeal having been made to the Aquaculture Licences Appeals Board ("**the Board**") pursuant to Section 40(1) of the Fisheries (Amendment) Act, 1997 (as amended and substituted) ("**the Act**") by Silver King Seafoods Ltd., a wholly owned company of Mowi Ireland ("**the Appellant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") dated 12 April 2019 to **REVOKE** the statutory entitlement of the Appellant to continue aquaculture operations under the provisions of section 19A(4) of the Act at site T06/202, Deenish Island, Co Kerry ("**the Site**") due to the breach in 2016 of Condition 2(e) of aquaculture licence (AQ No. 199) ("**the Licence**").

**AND WHEREAS** the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the submissions and observations made during the appeal, the reports of the Board's technical advisors and, as appropriate in the circumstances of this appeal, the matters set out at Section 61 of the Act, including the following:

- (a) the suitability of the place or waters at or in which the aquaculture is carried on for the activity in question,
- (b) other beneficial uses, existing or potential, of the place or waters concerned,
- (c) the particular 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 revocation on the economy of the area in which the aquaculture is carried on,
- (e) the likely ecological effects of the 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 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 this appeal at a series of board meetings from when the appeal was received to the determination date, including meetings on the following dates:

15 May 2019, 25 June 2019, 9 October 2019, 10 December 2019, 31 January 2020, 22 April 2020, 15 May 2020, 11 June 2020, 09 July 2020, 06 August 2020, 12 October 2020, 05 November 2020, 10 December 2020, 12 January 2021, 29 April 2021, 28 May 2021, 25 November 2021, 13 January 2022, 14 April 2022, 15 December 2022, 26 January 2023, 02 March 2023, 06 April 2023, 25 May 2023, 31 August 2023, 27 October 2023, 23 November 2023, 14 December 2023, 26 January 2024, 01 March 2024, 28 March 2024, 11 April 2024, 01 May 2024, 30 May 2024, 01 July 2024, 25 July 2024, 06 September 2024, , 13 November 2024, 12 December 2024 25 February 2025, 24 April 2025, 22 May 2025, 17 June 2025, 14 July 2025, 21 July 2025, 21 August 2025, 04 September 2025 and 12 September 2025.

The Board recognises that the appeal was lodged in 2019, and the time taken to determine this appeal. This reflects the complex and novel issues raised in an appeal against a revocation decision, and in particular in the context of a statutory entitlement to operate under Section 19A(4) of the 1997 Act. These issues warranted detailed consideration including requests for further information, consultation with the parties and observers to the appeal, the preparation of several technical reports and requests for legal advice on the applicable legal framework. The further information, submissions, technical reports, and associated advice then had to be considered by the Board. In addition, there was an initial Court imposed stay on the consideration of the appeal. Delays in the processing of the appeal were also caused due to the volume of appeals on hand at certain points, periods when the Board did not have its own internal technical advisor and the workload of their internal advisors when appointed. These various factors accordingly necessitated several extensions of the period within which the appeal could be determined, and extension letters issued on 12 December 2019, 27 April 2020, 10 November 2020, 9 June 2021, 26 November 2021, 20 December 2022, 05 September 2023, 09 August 2024, 18 December 2024, and 26 May 2025.

The Board in considering the appeal took account of the following reports of its Technical Advisors:



1. The updated ALAB Technical Advisor's Report on possible environmental and ecological impacts of an alleged breach of Condition 2(e) of the Aquaculture Licence by the operators, Mowi Ireland at site T06/202 dated the 12 April 2024
2. The ALAB Technical Advisors' Initial Site Inspection Report dated the 16 May 2025 and
3. The ALAB Technical Advisors' Final Report dated 08 July 2025.

## GROUNDS OF APPEAL

The Appellant raises two preliminary objections to the Minister's decision:

1. The Minister does not have the power to discontinue the Appellant's statutory entitlement to continue operations at the Deenish site under Section 68 of the Act.
2. The process employed by the Minister in making the decision did not meet the requirements of the Act as the decision was based on matters which the Appellant was not given an opportunity to address.

The grounds of the appeal are summarised as follows (which are stated to be without prejudice to these preliminary objections):

1. The Appellant is refuting the claim that they breached condition 2(e) of the Licence which provides that: 'the Licensee shall not harvest more than 500 tonnes (dead weight) of salmon in any one calendar year'.
2. The Appellant states that there is no evidence to conclude that there was an increase in the effluent discharged from the site as a result of the number of stock harvested in 2016.
3. The Appellant claims that the Determination will have substantial impacts on the overall operation of Mowi Ireland and that it will have potential consequences for the economy of the local area.
4. The Appellant claims delays in progressing applications and failure to implement Maximum Allowable Biomass (MAB) for finfish licences is negatively impacting the development of the aquaculture sector.
5. The Appellant states that Condition 2(e) requires revision and review. Mowi are seeking amendment to the terms of the Licence to allow for the application of a MAB which will regularise the Deenish Licence and would be in line with internationally recognised sustainable farming practices

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## ASSESSMENT

### Preliminary Issues

Subsequent to the making of the appeal, the Appellant advised that it would not dispute any decision by the Board that it had jurisdiction to determine the appeal. The Minister also made submissions that the Board had jurisdiction to do so on the basis that it was an appeal against a decision of the Minister to revoke a licence within the meaning of Section 40 of the Act. By correspondence dated 21 December 2023, the Board advised the parties and observers of its decision that it had jurisdiction to consider and determine the appeal.

The Board considered Salmon Watch Ireland's supplementary submission that it must decline jurisdiction to accept the appeal on the basis that the Minister's decision to discontinue the Appellant's statutory entitlement to operate was not a 'revocation' of a licence for the purposes of Section 40. For the reasons set out in the Minister's submissions to the Board, and in particular having regard to the High Court judgment in *Murphy's Irish Seafoods v the Minister for Agriculture, Food and the Marine* [2017] IEHC 353, which treated a similar decision as a revocation of a licence for the purposes of Section 68 of the Act which could be the subject of an appeal, the Board confirmed that it had jurisdiction to consider and determine the appeal.

The Board does not however have the power in this appeal to amend the Licence, as requested by the Appellant in its appeal, as the only decision before the Board is the Minister's decision to discontinue the Appellant's statutory entitlement to operate. Its jurisdiction on appeal under Section 40(1)(c) is accordingly to confirm the Minister's decision or review the Minister's decision and the basis for it and substitute its decision for that of the Minister on whether to discontinue this entitlement.

The Board also considered the Appellant's second preliminary objection concerning the procedures followed by the Minister in reaching the decision. In the context of the requirements of section 68(3) of the Act and the matters of concern identified by the Appellant and noting the availability of an appeal, the Board concluded that the process pursued by the Minister was not so flawed that it could reasonably be said that the Appellant had not been afforded their entitlement to proper procedures by the Minister.

Having discounted procedural issues as a basis for upholding the appeal, the Board has accordingly proceeded to determine the substantive issues raised in the appeal and whether the breach of Condition 2(e) in 2016 warranted a revocation of the statutory entitlement to operate. The Board adopted the assessment of these issues by its technical advisors in so far



as they are addressed in the ALAB Technical Advisors' Final Report dated 08 July 2025. The Board notes that certain further non-technical matters were not addressed in this report, and these are addressed below.

### **Breach of Condition 2(e) of the Licence**

The Board agreed with the Minister's position (and the opinion of its Technical Advisors set out in the Final Report) that Condition 2(e) of the Licence was breached in 2016 and did not accept the Appellant's ground of appeal on this issue.

For the purposes of this appeal, the Board also based the extent of the breach of Condition 2(e) on the harvesting records provided by the Appellant pursuant to a Section 47 request. These records provided a revised figure of 1,862.91 tonnes for the 2016 Annual harvested tonnage (and not 1,108.91 tonnes as referred to in the Minister's decision).

### **Environmental and Ecological Impacts**

The Board considered and agreed with the analysis and conclusions of its Technical Advisors on the possible environmental and ecological impacts of the breach of Condition 2(e) of the Licence as set out in their reports:

1. The updated ALAB Technical Advisor's Report dated the 12 April 2024 (the April 2024 TA report),
2. The ALAB Technical Advisors' Initial Site Inspection Report dated the 16 May 2025, and
3. The ALAB Technical Advisors' Final Report dated 08 July 2025 (the July 2025 TA report or Final Report).

The April 2024 TA report found no evidence that the data available indicated an increased negative environmental or ecological impact due to the increased fish harvested from Deenish Site T06/202 in 2016 under the following headings examined:

- i. Impacts on benthos, both directly under the site and nearby,
- ii. Impacts on surrounding water quality, including status under the Water Framework Directive,
- iii. Potential for an increase in disease and pest risk including sea lice numbers,
- iv. Risk of introducing Invasive species,
- v. Potential for an increased risk of escaped fish and the negative impacts of such and



- vi. Potential negative impacts on Protected species, habitats and sites, including those protected under the Birds and Habitats Directives

In so far as there may have been any increased effluent which may have occurred from 01 April 2015 as a result of stocking on Site, at the Board meeting on 12 September 2025 the Technical Adviser confirmed and clarified the response in the July 2025 TA report to the second appeal issue raised by the Appellant, that she found no evidence that the available data indicated an increased negative environmental or ecological impact due to the increased fish harvested from the Deenish site in 2016.

The April 2024 TA report did also express concerns “regarding how robust and complete the Appropriate Assessment relating to Site T06/202 was in 2016” but was not able to draw any definite conclusion on this point at that time. However, the Board considered that the July 2025 TA report satisfactorily addresses these concerns for the reasons set out further below.

### **Section 61 Assessment**

The Board also considered and agreed with the assessment contained in July 2025 TA report with respect to the factors set out in Section 61 of the Act.

The July 2025 TA report concludes that, in the Technical Advisors’ opinion, the Deenish site is and was in 2016 suitable in principal for salmon farming, there are and were in 2016 no other users of the Deenish site, the Deenish project has and had in 2016 a positive impact on the local economy and there are no current likely effects or effects from the project in 2016 on the man-made environment of heritage value in the vicinity of the site.

The Board also agreed with the conclusion that the discontinuance of the entitlement to operate would be likely to have a significant direct negative effect on the current staff and economy of the local area.

The report states that, in the Technical Advisors’ opinion, none of the objectives of the Kerry County Development Plan in force at the time of the breach, and currently, are determinative as to whether aquaculture should be located at the Deenish site and in particular at the stocking levels associated with the harvested tonnage in 2016.

The Section 61 (e) assessment includes a review of the following Appropriate Assessment reports for the purposes of considering whether there was any evidence that the breach of the Licence in 2016 had negative impacts on any European Site:





1. Natura Impact Statement for salmon farm installation at Deenish Island, Watermark Aqua Environmental, June 2012
2. Report supporting Appropriate Assessment of Aquaculture and Fisheries Risk Assessment in Kenmare River SAC, October 2017
3. Report supporting Appropriate Assessment of Aquaculture and Fisheries Risk Assessment in Kenmare River SAC, March 2019
4. Appropriate Assessment Conclusion Statement by Licensing Authority for aquaculture activities in Kenmare River SAC, September 2019

The above reports are available on the ALAB website.

The July 2025 TA report agreed with the findings of the April 2024 TA report that there was no evidence that the available data indicated an increased negative environmental or ecological impact due to the increased fish harvested in 2016. The report recognised that it cannot be conclusively determined that it was not likely to have any effect on wild fisheries, natural habitats and flora and fauna, including on European Sites. However, the Technical Advisor also confirmed at the Board meeting of the 21 July 2025 that there was no evidence that the breach of Condition 2(e) of the Licence that occurred in 2016, resulted in environmental damage to any European site and no such evidence was before the Board.

The Board also agreed that Stage 1 Screening for Appropriate Assessment (AA) and stage 2 AA requirements apply to the licensing process and are a matter for the Minister as part of the assessment of the current licence application before the Department.

### **The Operation of the Licence**

The Appellant in its appeal submits that Condition 2(e) is out of date and is not consistent with Condition 2(d).

- Condition 2(d) of Aquaculture Licence AQ 199 states that “the stock of fish in the cages shall not exceed such quantity as may be specified by the Minister from time to time, the number of smolts to be stocked at the site should not in any event exceed 400,000. Licensed stocking densities are not to be exceeded and will be subject to inspection at any time by the Department of the Marine”.
- Condition 2(e) of Aquaculture Licence AQ 199 states that “the licensee shall not harvest more than 500 tonnes (dead weight) of fish in any one calendar year.”

The Board is of the opinion that the allowable smolt input quantity and the allowable harvest tonnage weight conditions are not commercially viable and taken together are not coherent.



Inputting 400,000 smolts into the Deenish site in 2016 would potentially have resulted in a harvest of 1,400 tonnes (dead weight) of salmon, if the salmon were allowed to grow to their marketable weight (taking 5kg to be the weight of a marketable salmon and based a production period mortality rate of 30%).<sup>1</sup> The Board also noted that 30% does not reflect normal survival rates in the industry. Under normal survival rate circumstances, a 400,000 smolt input would in fact result in a harvest greater than 1,400 tonnes if allowed to grow to their marketable weight.

The Board considers the conditions of Aquaculture Licence AQ 199, which issued in 1995, to be inappropriate, out of date and contrary to supporting best practices. At the 14 March 2016 meeting between the Department and Marine Harvest Ireland, both Bord Iascaigh Mhara (BIM) and the Marine Institute (MI) were also broadly of the view that licences needed to be updated to meet modern production techniques but neither agency would condone a breach of existing licence conditions.

The Board, while it also does not condone the breaching of condition 2(e) of aquaculture licence No. 199, is of the opinion that finfish aquaculture licence conditions should be updated to reflect modern production techniques (subject to assessment pursuant to licence applications in respect of individual sites) and regulation by way of Standing Stock Biomass/ Maximum Allowable Biomass (MAB).

The Board noted that the Minister for Agriculture, Food and the Marine, Simon Coveney TD issued a press release on 05 December 2011 to announce a new format for Aquaculture Licence templates. In this press release the Minister confirmed that one of the core changes to Aquaculture licences would be a *"Change from licensing by Annual Harvested Tonnage (i.e. the dead weight of fish harvested from a site in a calendar year measured in tonnes) to Standing Stock Biomass for Finfish (the weight of live fish on a site at any given time, measured in tonnes). Standing Stock Biomass is recognised internationally as the appropriate metric for assessing loading at an aquaculture production site and can be measured on a real time basis thus facilitating effective regulation and management of sites."*

The National Strategic Plan for Sustainable Aquaculture Development 2020 (developed in 2015) also recommended that licences for individual sites should be issued on the basis of approval for an initial maximum allowable biomass.

The 2017 Report of the Independent Aquaculture Licensing Review Group, an independent group tasked by the Minister for Agriculture, Food and Marine to carry out a review of the aquaculture licence process and associated legal framework, also recommended changes to

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<sup>1</sup> Aquaculture Stewardship Council (ASC) audit records for Deenish for the years 2015 and 2017 are 45.8% and 23.9% respectively (to note no figure is available for 2016 and 30% represents a rounding of the average of the 2015 and 2017 figures).

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licensing practices to streamline and improve the licensing process. Recommendation 8.16 (1) states that work should commence immediately on the preparation of new Aquaculture legislation, having regard to best practice in other jurisdictions and in other relevant consenting systems here in Ireland.

### **The Public Interest and Other Considerations**

The Board does not condone the breach of Condition 2(e) and acknowledges that the Appellant was fully aware of the conditions of the Licence and that the extent of the breach was significant in terms of the excess tonnage harvested by reference to the 500-tonne limit set out Condition 2(e) (particularly when considered against the revised figure of 1,862.91 tonnes) based on harvesting on an annual basis.

However, notwithstanding the submissions made by the Minister and other submissions made in support of the Minister's decision, the Board considered that the Minister's decision was not warranted or proportionate for the following reasons.

The Board is of the opinion that the current conditions in Aquaculture Licence AQ 199, relating to the allowable smolt input quantity and harvest tonnage, are inappropriate, outdated, and inconsistent with best practice, are not commercially viable and when taken together are not coherent for the reasons set out in this Determination. Finfish aquaculture licence conditions should be updated to reflect modern production techniques and be regulated by reference to MAB, subject to the relevant assessments under individual licence applications. MAB is generally considered more effective from an environmental, operational and regulatory perspective.

At the time of the 2016 breach the Deenish farm was in practical terms operating under MAB; the October 2017 report supporting Appropriate Assessment of Aquaculture and Fisheries Risk Assessment in Kenmare River SAC describes the method of stocking that was taking place at the Deenish [and Inishfarnard] site at the time. The report states that 'The sites operate on a two-year annual alternate site stocking cycle, inputting 800,000 smolts, to each site alternately and harvesting them in year two from months 16 to 22. The site is then left fallow for two months before next smolt input.'

No harvest occurred in 2015 or 2017 and the Minister's decision to revoke the statutory entitlement to operate was based on the 2016 harvest of 1,108 tonnes.

The Board considered that the breach of condition 2(e) of 121% cited in the DAFM submission should take into account that harvesting took place in alternate years, which if considered on a biannual basis would indicate a breach of just over 10% (having regard to the harvest tonnage on which the Minister based his decision).



In 2016, had the site been licensed to operate under MAB a 1,108-tonne harvest, or indeed a 1,863-tonne harvest, is likely to have been within MAB limits when compared to a MAB licenced facility of a similar nature and scale.

The April 2024 report and Final Technical Advisor's report both concluded that the available data did not demonstrate any increased negative environmental or ecological impact arising from the higher fish harvest in 2016 including as regards any European Sites.

In this respect, the Board also considered the Minister's submission that if the Appellant's position were accepted, no action could ever be taken against a licensee for breaching Condition 2(e) unless and until actual damage to the environment was detected and proven, which would run contrary to the precautionary principle. It is accepted that actual damage need not be shown in all cases. However, in this instance, there was no evidence of any such damage, including by reference to monitoring records, and this was a relevant consideration in the overall exercise of the Board's discretion in considering this appeal.

The Board is also of the opinion that the revocation of the entitlement to operate would be likely to have a significant direct negative effect on the current staff and economy of the local area.

In addition, the Board considered the Minister's submission that, as of the date of the appeal, no application had been made to the Minister to amend the licence conditions to provide for harvesting based on MAB and that such a change would require an EIS and would need to be considered as part of a formal licence application. In this respect, the Board noted that the Appellant had sought to amend the Licence by way of this appeal (although this is not the appropriate statutory mechanism to do so for the reasons set out in this Determination). The delays in the licensing system are also recognised as referenced in the April 2024 TA report.

Finally, the Board recognises the importance of and the public interest in the integrity of the State's regulatory regime and that enforcement is in the public interest. However, the absence of any scalable penalties or graduated sanctions in the Act to enforce the regulatory regime was also considered relevant and the Board was of the view that graduated enforcement mechanisms should be put in place. As also noted by the Department, the Act does not provide for a range of sanctions, short of revocation in this instance, and the Board did not consider that revocation was proportionate to the breach in the circumstances of this appeal.



## DETERMINATION

This appeal concerns the Board's assessment and determination of whether the Minister's decision to revoke the statutory entitlement to continue to operate under Section 19A(4) of the Act was warranted and proportionate.

In overall conclusion, notwithstanding the breach of Condition 2(e) of the Licence and the public interest in the integrity of the State's regulatory regime, the Board determined that the decision to discontinue the statutory entitlement of the Appellant to continue aquaculture operations at the Site was disproportionate to the breach of Condition 2(e) of licence AQ 199 in 2016 in circumstances where:

- The current conditions in the Licence are inappropriate, outdated, and inconsistent with best practice and are not commercially viable and in particular conditions 2(d) and 2(e) when taken together are not coherent,
- There was no evidence of damage to the environment as a result of the breach in 2016,
- Revocation would result in significant adverse effects on the local economy,
- There is a recognised need to update licence conditions and there are significant delays in the licensing system,
- There is an absence of graduation sanctions and alternative enforcement mechanisms under the Act.

Having considered all the foregoing, the Board determined at its meeting of 12 September 2025 pursuant to Section 40(4)(c) of the Act and in the exercise of its discretion, to substitute its decision on the matter for that of the Minister and determined that the statutory entitlement of the Appellant to continue aquaculture operations at the Site should not be discontinued on the basis of the breach of Condition 2(e) of the Licence in 2016.

Dated this *12<sup>th</sup>* day of *September* 2025

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



Authorised Signatory



Authorised Signatory

