

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP37/2019**

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 and substituted) ("**the Act**") by Sheila Scallan and the Late Noel Scallan ("**the Appellants**" and "**the Applicants**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to **GRANT** (with variations) an Aquaculture Licence to Sheila Scallan and the Late Noel Scallan on site ref: T03/091A for the bottom cultivation of mussels on a site on the foreshore at Wexford Harbour, Co. Wexford ("**the Site**").

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the report of the Board's Technical Advisor and 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 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 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 proposed aquaculture 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 this appeal at a series of board meetings from when the appeal was received to the determination date, including meetings on the following dates: 14 November 2019, 10 December 2019, 31 January 2020, 26 February 2020, 22 April 2020, 06 August 2020, 12 December 2020, 29 April 2021, 22 July 2021, 21 September 2021, 25 November 2021, 13 January 2022, 10 February 2022, 12 May 2022, 14 July 2022, 23 November 2022, 15 December 2022, 26 January 2023, 02 March 2023, 06 April 2023, 25 May 2023, 23 June 2023, 28 July 2023, 28 September 2023, 27 October 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, 26 September 2024, 13 November 2024, 12 December 2024, 14 January 2025, 25 February 2025 and 21 March 2025.

The Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the reports of its Technical Advisors and the submissions made during the course of the appeal including the following documents:

1. The August 2016 Department of Agriculture, Food and the Marine (DAFM) 'Appropriate Assessment Summary Report of Aquaculture in the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710), Wexford Harbour and Slobs SPA (site code 004076) and Raven SPA (site code 004019)' and Annex I & II to this report (the Marine Institutes 'Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)' and the Atkins 'Marine Institute Bird Studies Wexford Harbour, the Raven and Rosslare Bay: Appropriate Assessment of Aquaculture'),
2. The DAFM 'Updated Appropriate Assessment Conclusion Statement' (report undated),
3. The KRC Ecological Technical Advisor's Report to ALAB dated 01 June 2023,
4. The KRC Supplementary Report dated the 05 December 2023,
5. The KRC Gap Analysis Report (revision) dated 26 September 2024,
6. The KRC correspondence dated 30 January 2025 confirming that the conclusions of the Gap Analysis Report are still applicable to the assessment of the actual and proposed activities the subject of the remaining live appeals before ALAB,
7. The ALAB Technical Advisor's Interim Report dated 21 March 2024,
8. The submissions received in response to the Section 46 Notice issued on the 31 January 2024,
9. The ALAB Technical Advisors' Screening for AA Report for site T03/091A dated 14 February 2025 and
10. The ALAB Technical Advisor's Final Report dated 19 February 2025.

GROUNDINGS OF APPEAL

The grounds of the appeal are summarised as follows:

1. The reduction in site size granted is unreasonable and disproportionate based on the grounds given by the Department.
2. There is no rational or scientific basis for taking 15 per cent coverage as a standard to invite intervention for habitats.
3. The vast majority of the existing area cultivated by Applicants does not constitute mud flats and sand flats not covered by sea water at low tide.
4. The Department relies on GSI mapping for determination which was deemed not satisfactory by those carrying it out.
5. Disagreement with conclusions of AA reports.
6. The size and layout of the proposed areas render mussel farming uneconomical on these sites.
7. Further grounds as given in the Aquafact 2019 report, a copy of which was submitted with the appeal.

ENVIRONMENTAL IMPACT ASSESSMENT

An Environmental Impact Assessment (EIA) must be carried out by the Board in respect of an appeal of:

- (a) aquaculture of a class specified in Regulations 5(1)(a), (b), (c) or (d) of the Aquaculture (Licence Application) Regulations 1998 as amended,
- (b) intensive fish farming of a class specified in Annex II of the EIA Directive 2011/92/EU as amended by Directive 2014/52/EU which the Board determines would be likely to have significant effects on the environment.

The proposed aquaculture the subject of the appeal is not of a class specified in Regulations 5(1)(a), (b), (c) or (d) of the Application Regulations.

In addition, it is not “intensive fish farming” for the purposes of Annex II of the EIA Directive. As the aquaculture activities, the subject of the appeals before the Board, are not of a class of project specified in the 1998 Regulations and/or Annex II of the EIA Directive, there is no requirement to carry out a screening for EIA or an EIA and the Board agreed with the conclusions of its Technical Advisor as set out in the Final Report dated 19 February 2025.

SCREENING FOR APPROPRIATE ASSESSMENT

The Board considered the aquaculture 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”).

Given that Screening for AA was requested in almost all of the appeals, the ALAB Technical Advisors undertook a screening for Appropriate Assessment for the Aquaculture Licence Site T03/091A, the results of which are presented in the T03/091A Screening for Appropriate Assessment Report dated the 14 February 2025.

The Board's Technical Advisor also completed the Wexford Harbour Appeals Technical Advisor's Final Report dated the 19 February 2025.

The Board agreed with the findings of both the T03/091A Screening for Appropriate Assessment Report and the Wexford Harbour Appeals Technical Advisor's Final Report that an Appropriate Assessment is required as it cannot be excluded, on the basis of objective scientific information, that the proposed aquaculture, individually or in combination with other plans or projects, will have a significant effect on the following European sites: Slaney River Valley SAC, Wexford Harbour and Slob's SPA, Seas off Wexford SPA, Raven SPA, Lady's Island Lake SPA, Saltee Islands SPA, Keeragh Islands SPA and the Mid-Waterford Coast SPA.

Mussel culture impact on water quality

In particular, having regard to Sections 8 of the Wexford Harbour Appeals Technical Advisor's Final Report dated the 19 February 2025 and Steps 1 and 3 of the T03/091A Screening for Appropriate Assessment Reports dated the 14 February 2025, the Board agrees with and adopts the Technical Advisor's assessment and conclusions that any potential reduction in water column nutrient levels in Wexford Harbour associated with the bottom cultivation of mussels cannot be considered grounds to negate the obligations to carry out an Appropriate Assessment as required under Article 6(3) of the Habitats Directive 92/43/EEC because the potential impacts of the proposed aquaculture on European Sites are not materially affected by water quality issues.

The potential impacts in relation to Appropriate Assessment are physical disturbance and habitat loss, increased suspended sediment concentrations and visual impacts and above water noise disturbance i.e. the potential impacts on European Sites which trigger the requirement for an Appropriate Assessment arise regardless of any beneficial impact that mussel culture may have on water quality.

APPROPRIATE ASSESSMENT

The Board noted the August 2016 Department of Agriculture, Food and the Marine (DAFM) 'Appropriate Assessment Summary Report of Aquaculture in the Slaney River Valley SAC (Site Code: 000781), Raven Point Nature Reserve SAC (Site Code: 000710), Wexford Harbour and Slob's SPA (site code 004076) and Raven SPA (site code 004019)', Annex I and II to this report (the Marine Institutes 'Report supporting Appropriate Assessment of Aquaculture in Slaney River Valley SAC (Site Code: 000781) and Raven Point Nature Reserve SAC (Site Code: 000710)' and the Atkins 'Marine Institute Bird Studies Wexford Harbour, the Raven and Rosslare Bay:

Appropriate Assessment of Aquaculture’) and the DAFM ‘Updated Appropriate Assessment Conclusion Statement’ (report undated).

The Board noted the KRC Ecological Technical Advisor’s Report to ALAB dated 01 June 2023, the KRC Supplementary Report dated the 05 December 2023, the KRC Gap Analysis Report (revision) dated 26 September 2024 and the KRC correspondence dated 30 January 2025 confirming that the conclusions of the Gap Analysis Report are still applicable to the assessment of the actual and proposed activities the subject of the remaining live appeals before ALAB. The Board agrees with the assessments of its Technical Advisors and KRC and, in particular, that based on the available information and having regard to the identified data gaps it is not possible to assess the potential impacts of the proposed aquaculture activities to meet the requirements of an appropriate assessment.

The Board considered that the Appropriate Assessment as carried out by the Marine Institute and Atkins on behalf of DAFM for Aquaculture Activities in Wexford Harbour in relation to Special Protected Areas (“SPA”), and to Special Areas of Conservation (“SAC”) was incomplete and does not rule out beyond reasonable scientific doubt the potential impact of the proposed aquaculture either individually or in combination with other plans or projects on each of the Natura 2000 sites likely to be affected.

Having regard to all of the foregoing, based on the available information and having regard to the identified data gaps, the Board finds that it cannot be established beyond a reasonable scientific doubt that the proposed aquaculture at T03/091A is not likely to have significant effects, either individually, or in combination with other plans or projects, on the conservation objectives of the Slaney River Valley SAC, Wexford Harbour and Slobbs SPA, Seas off Wexford SPA, Raven SPA, Lady’s Island Lake SPA, Saltee Islands SPA, Keeragh Islands SPA and the Mid-Waterford Coast SPA and as such, the proposed aquaculture could adversely affect the integrity of these European Sites either individually or in combination with other plans or projects.

Natura Impact Statement (NIS)

The Board considered whether to request an NIS from the licence Applicants with a view to addressing the identified data gaps. Having regard to Section 11 of the Wexford Harbour Appeals Technical Advisors Final Report dated the 19 February 2025 and given the time and state agency input required to produce an NIS, the Board determined that it is not appropriate to request an NIS from the Applicants at this time as this would involve a foreseeable delay of up to 3 to 4 years and given the Board’s duty under Section 56 of the Fisheries (Amendment) Act 1997 to ensure that appeals are dealt with and determined expeditiously and that all steps are taken to avoid unnecessary delays.

The Board is of the opinion that an NIS addressing the identified data gaps is necessary to enable it to complete an Appropriate Assessment, however, such an NIS is not necessary to enable the Board to determine this appeal on the basis of the information available. Therefore,

the Board considered that a request under Section 47 of the Act or Regulation 42 of the European Communities (Bird and Natural Habitats) Regulations 2011 for such an NIS was not necessary to enable the Board to determine the appeal. Further the Board had concerns that it would not be feasible to expect the licence Applicants to provide such an NIS as significant resources and the involvement of government bodies, such as the NPWS and experts in the design and implementation of the work programme would appear necessary given the nature and extent of the programme of work needed to address these deficiencies. In any event, the Board considered postponing the determination of this appeal for a period of up to 3 to 4 years would be contrary to the Board's statutory objective to ensure that appeals are determined accordance with Section 56 of the Act.

The Board recognises that the appeal was lodged in 2019. However, the time taken in the processing of the appeal has involved an iterative step by step process addressing complex issues which have warranted careful and detailed consideration, including the engagement of technical experts to prepare reports to advise on various matters as well as affording parties to the appeal, observers and statutory consultees the opportunity to make submissions at various stages. These submissions then had to be reviewed and considered. The consideration of the appeal necessitated several extensions of the period within which they could be determined as set out in the extension letters which issued in the course of the appeal on 06 February 2020, 10 November 2020, 6 May 2021, 25 May 2022, 20 December 2022, 29 June 2024, 13 March 2024, 27 September 2024 and 18 December 2024.

Oral hearing

The Board further considered whether to convene an oral hearing pursuant to Section 49 of the Fisheries (Amendment) Act 1997 and decided not to exercise its discretion to do so as the identified data gaps could not be addressed by way of oral hearing.

Martin Scallan Submission

A submission was made on 1 May 2024 by Martin Scallan on behalf of Scallan Mussels. The submission did not have any material effect on the Board's decision which is based on Appropriate Assessment issues. In so far as the submission raised an issue relating to the impacts on European Sites due to potential eutrophication, this was also raised in other submissions and is addressed in the Technical Advisor's Final Report and this Determination.

DETERMINATION

For the avoidance of doubt, the Board agreed with the findings of the Wexford Harbour Appeals Technical Advisor's Final Report dated 19 February 2025.

The Board has determined the appeal on the grounds that:

The Site is not suitable for the proposed aquaculture in terms of Statutory status, potential Ecological impacts, Environmental effects, Effect on man-made heritage and under Appropriate Assessment, for the reasons set out in the Wexford Harbour Appeals Technical Advisor's Final Report dated the 19 February 2025.

Primarily this site is not suitable for the proposed aquaculture given the nature and extent of the information required to enable an AA to be carried out under the requirements of the Birds and Habitats Directive and that based on the information currently available and in the absence of an NIS addressing the identified data gaps, it cannot be established beyond a reasonable scientific doubt that the proposed aquaculture, either individually or in combination with other plans and projects, would not adversely affect the integrity of the relevant European Sites.


Having considered all the foregoing, the Board determined at its meeting of 21 March 2025 pursuant to Section 40(4)(b) of the Act, to **REFUSE** an Aquaculture Licence to the Applicants at Site T03/091A.

Dated this *21st* day of *March* 2025

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



Authorised Signatory



Authorised Signatory

