

**An Bord Achomhairc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board**



AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 1/1-2/2017**

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 The Carrickfinn Trust Company Ltd, Rose & Charles Boyle, Rose & Joanna Burke, Bernadette Boyle, Kathleen McFadden, John Gillespie, Eileen & Hugo Duffy, Geraldine Boyle, Maeve & John Joe Carson, Pat Sharkey, Anthony Sharkey, Anna Gallagher, Mary T. O'Donnell, Dom Sharkey, and John McFadden (AP1/1/2017) and Coiste Timpeallachta an Ghaoith (AP1/2/2017) ("the Appellants") against the decision of the Minister for Agriculture, Food and the Marine ("the Minister") to grant an Aquaculture Licence to Mr Thierry Gillardeau & Mr Desmond Moore ("the Applicant") for the cultivation of Pacific Oysters (*Crassostrea gigas*) using bags and trestles in Braade Strand, Gweedore Bay, Co Donegal on Sites T12/410A & T12/410B ("the Sites") pursuant to an Application for an Aquaculture Licence made by the Applicant (the "Application for an Aquaculture Licence")

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the submissions received by the Board from third parties pursuant to section 45(1) of the Act; the submissions received by the Board pursuant to section 44(2) of the Act; the Notices issued by the Board pursuant to section 47(1) of the Act to National Parks and Wildlife Service and to the Marine Institute, and their respective responses; the Appropriate Assessment Screening and Appropriate Assessment provided to the Board as part of the Minister's file; the Bird Impact Assessment dated 13 February 2018, the Supplemental Appropriate Assessment

Screening Report dated April 2019, commissioned by the Board and the Natura Impact Statement dated 28 October 2020.

As a consequence of the Supplemental Appropriate Assessment Screening Report dated April 2019, the Board determined that it would proceed to a Stage 2 Appropriate Assessment and notified the Applicant on 21 June 2019 in accordance with Regulation 42(8) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended ("**2011 Regulations**"), that the Board had determined that a supplemental Appropriate Assessment, as referred to in Article 6(3) of the Habitats Directive (i.e. Council Directive 92/43/EEC of 21 May 1992 as amended), is required for the project the subject of the above appeal ("the Notice"). The Notice included the following reasons for the Board's determination:

"Independent Appropriate Assessment screening commissioned by the Board had concluded that, based on a preliminary assessment and objective criteria, it was not possible to rule out potential significant adverse impacts resulting from the proposed oyster farming activity in respect of selected nearby SPAs and their associated bird species of conservation interest (SCI). The specific SCIs and *Natura* sites of concern were: Common Gull of the West Donegal Islands and Inishbofin, Inishdooey and Inishbeg SPAs and the Lesser Black-backed Gull of the Inishbofin, Inishdooey and Inishbeg SPA. The Appropriate Assessment screening report determined that:

1. The proposed development of aquaculture sites within Gweedore Bay will result in the loss of 58 ha of intertidal habitats potentially used by the abovementioned SCIs for feeding and/ or roosting.
2. Several cumulative impacts have been identified that, in combination with the proposed development, may further exacerbate impacts on the SCIs. These include:
 - a. Additional proposals for aquaculture development (largely oyster cultivation) elsewhere and in relatively close proximity to the Gweedore Bay aquaculture sites.
 - b. High levels of recreational disturbance which, if not regulated, may temporarily or even permanently displace the SCIs from the area; and

- c. Sea and river angling which could potentially affect prey availability, especially for Lesser Black-backed Gull which is reliant on fish prey."

The Notice directed the Applicant, pursuant to paragraphs 8 and 3 of Regulation 42 of the 2011 Regulations, that a Natura Impact Statement as defined in Regulation 2(1) of the 2011 Regulations "(the NIS)" was required and was to be furnished to the Board within 3 (three) months of the date of the notice. The Notice also stated that, pursuant to Regulation 42(4) of the 2011 Regulations, unless the Board otherwise directed, where an applicant for consent for a project who, having been directed in accordance with of Regulation 42(3) of the 2011 Regulations, fails to furnish a Natura Impact Statement within the period specified in the notice or any additional period that may be agreed, the application shall be deemed to be withdrawn.

The Applicant sought an extension of time to submit the NIS. The Board consented on 16 September 2019 to a period of extension of 345 days with the new deadline being 31 August 2020. The Applicant sought a further extension of time to submit the NIS. The Board consented on 27 August 2020 to a period of extension of 66 days with the new deadline being 31 October 2020. A NIS was submitted by the Applicants to the Board on 28 October 2020.

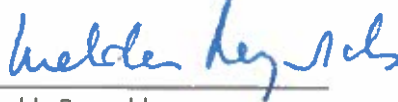
The Board considered the NIS as provided by the Applicants. Pursuant to Regulation 42(3)(b) of the 2011 Regulations, the Board notified the Applicant on 8 November 2021 ("the Second Notice") stating that it considered there was insufficient information provided in the NIS to enable the Board carry out an Appropriate Assessment in accordance with the requirements of the 2011 Regulations. The Board noted the lack of referenced evidence and data used to assess and evaluate the identified potential effects and the conclusions drawn in the NIS which the Board found did not prove the absence of the identified potential effects "*beyond reasonable scientific doubt*". Pursuant to Regulation 42(3)(b) of the 2011 Regulations, the Board directed the Applicant to furnish additional information in the form of a revised and updated NIS addressing the issues referred to in the appendix attached to the Second Notice within sixty (60) days of the Second Notice.

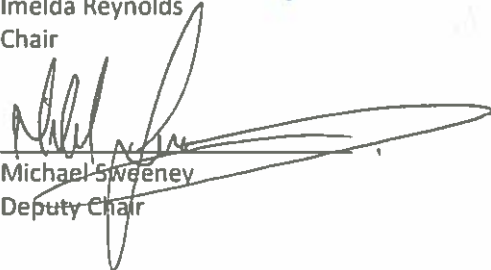
No revised and updated NIS, as directed by the Second Notice, has been received by the Board nor has the Applicant sought any additional period of time within which to furnish the required NIS.

As a consequence, the Applicant's Application for an Aquaculture Licence is deemed to be withdrawn by virtue of the provisions of Regulation 42(4) of the 2011 Regulations and this Appeal is determined accordingly.

Dated this 25 day of January 2022

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


Imelda Reynolds
Chair


Michael Sweeney
Deputy Chair