

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP12/2018**

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 Tony McGrath ("**the Applicant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to refuse an Aquaculture Licence (and accompanying foreshore licence) to Tony McGrath, for the cultivation of Pacific Oysters using bags and trestles at Broadhaven Bay, Co Mayo on Sites T10/081A and T10/081B ("**the Sites**")

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 (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 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, 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 appeals at its meetings on the 14 November 2018, 11 December 2018, 22 January 2019, 26 March 2019, 30 April 2019, 15 May 2019, 25 June 2019 and 9 October 2019.

In reaching its determination on the Appeal the Board noted and had regard to the following the following:

- the recommendation of its technical advisor that the Sites and their operation is unlikely to have significant effects on the environment by virtue of *inter alia*, its nature, size or location, and that in-combination effects are also unlikely. Therefore an environmental impact assessment is not required. The Board noted and accepted this recommendation;
- the Appropriate Assessment Conclusion Statement produced by the Minister was to the effect that the production of Pacific oysters at the Sites will have no significant negative impact on the qualifying interests of the Sites; the opinion of the Board's technical advisor was that the assessment carried out by DAFM was adequate and that the cultivation of the Pacific oyster at the Sites will not have a significant effect on a Natura 2000 site, both individually and in combination with other plans or projects, for the following reasons:
 - while the Sites are located within the Glenamoy Bog Complex SAC, sea cliffs and Atlantic salmon are the only marine features of this SAC. As the aquaculture will be carried out in the intertidal zone, sea cliffs will be unaffected and the proposed levels of aquaculture will not impact on Atlantic salmon migrating; and
 - while the Sites are located within the Blacksod/Broadhaven Bay SPA, as the Sites are the only areas of aquaculture within Sruwaddacon Bay and make up only a small portion of the available intertidal area, it is not anticipated that the Sites will negatively impact, through disturbance or displacement, upon species for which Blacksod/Broadhaven Bay SPA has been designated.

The Board therefore determined that the Appropriate Assessment Conclusion Statement is adequate in terms of its assessment of the impacts of aquaculture activities to sensitive habitats, species and birds in both the Glenamoy Bog Complex SAC and the Blacksod/Broadhaven Bay SPA ("the SAC/SPA").

The Board determined the Appeal on the basis of the following:

- the Sites are suitable for the cultivation of the pacific oyster *Crassostrea gigas*, despite them being outside a designated shellfish area, for the following reasons;
 - The surrounding area is characterised by a low population density, non-intensive dairy farming, upland and extensive areas of blanket bog;
 - Sruwaddacon Bay is a dynamic ecosystem comprised of a transitional zone between freshwater inputs from the Glenamoy and Muingnabo rivers and various small streams, and the fully marine environment of Broadhaven Bay;
 - The entire estuary is continuously swept by semi-diurnal tides, suggesting the suitability to support aquaculture;
 - While aquaculture structures are visible in the seascape, they do not dominate the views of the bay, they are often perceived as part of the surrounding mudflats and are recognised as man-made structures only when seen from very elevated positions and/or when the tide is very low, exposing the trestles fully.
 - the Sites have previously been in operation and are not new sites for aquaculture
 - oyster cultivation at the Sites would not likely cause degradation to the qualifying interests of the SAC/SPA
 - The Sites are the only areas of aquaculture in the surrounding Sruwaddacon Bay; and
 - the Appellant has given substantive reasoning behind the lack of use of the Sites over the last number of years;

- As there is little use of Sruwaddacon Bay by other fishing or marine leisure activities, there will be little to no negative impact from the granting of the license;

- the granting of the licence would not significantly negatively impact the qualifying interests of the SAC/SPA;

- The granting of the license is likely to have a positive effect on the local economy;

- There will be no significant adverse effect on the natural habitats, wild fisheries and fauna and flora of the area as a result of the proposed operation for the following reasons:
 - The proposed development is unlikely to have a significant impact on the qualifying interests of the SAC/SPA;
 - The majority of aquaculture activities are consistent with the conservation objectives of the SAC/SPA; and
 - Any risk of establishment of Pacific oysters within the SAC/SPA is low and can be mitigated by using Triploid *C.gigas* oyster seed;

- There are non-significant general environmental effects as a result of the proposed development; and

- There will be no likely effects, either positive or negative, on the man-made environment or heritage value of the area.

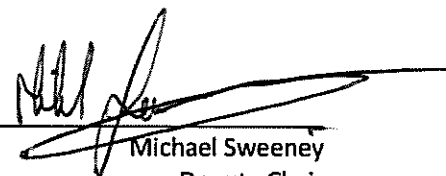
Having considered all the foregoing, the Board determined at its meeting on 9 October 2019, pursuant to Section 40 (4) (b) of the Act, to **GRANT** an aquaculture licence to the Applicant for the Sites.

Dated this 4 day of November 2019

PRESENT when the Common Seal of the
AQUACULTURE LICENCES APPEALS BOARD
was affixed hereto:



Imelda Reynolds
Chair



Michael Sweeney
Deputy Chair

