

An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



**NOTICE OF DETERMINATION THAT APPROPRIATE ASSESSEMENT IS REQUIRED**

FAO: MOWI Ireland, formerly Bradán Fanad Teo

t/a Marine Harvest Ireland,  
Kindrum,  
Fanad,  
Letterkenny,  
Co. Donegal

20 June 2019

Our Ref: AP2/1-14/2015

Re: **Appeal against the decision of the Minister for The Department of Agriculture, Food and the Marine to GRANT an aquaculture and foreshore licence for the cultivation of Atlantic Salmon; *Salmo Salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork Site Ref: T05/555**

Dear Sirs,

You are hereby given notice, in accordance with Regulation 42(8) of the European Communities (Birds and Natural Habitats) Regulations 2011 as amended ("2011 Regulations"), that the Aquaculture Licences Appeals Board ("ALAB") has determined that an Appropriate Assessment, as referred to in Article 6(3)<sup>1</sup> 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 for the following reasons.

Independent Appropriate Assessment screening commissioned by ALAB has concluded that, based on a preliminary assessment and objective criteria, it is not possible to rule out potential significant adverse impacts resulting from the installation of the proposed salmon farm in respect of selected nearby SPAs and their associated bird species of conservation interest (SCI). The specific SCIs and *Natura* sites of concern are: Fulmar (Beara Peninsula SPA, Iveragh Peninsula SPA, Deenish Island and

<sup>1</sup> Note that Article 6(3) of the Habitats Directive also applies to SPAs protected under the Birds Directive as set out in Article 7 of the Habitats Directive.

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Scariff Island SPA), Gannet (The Bull and The Cow Rocks SPA and Skelligs SPA) and Guillemot (Iveragh Peninsula SPA). The Appropriate Assessment screening report determined that:

1. The proposed development of aquaculture sites within Bantry Bay will result in the loss of 42.5 ha of inshore habitat that could potentially be used by the abovementioned SCIs for feeding, and
2. cumulative impacts have been identified that may, in combination with the above development, exacerbate further the impacts on the SCIs. They include additional fish farms in the area (elsewhere in Bantry Bay) and associated levels of disturbance.

You are hereby directed, 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 is required and is to be furnished by you.

The Natura Impact Statement is to be submitted to ALAB within 3 (Three) months of the date of this Notice (21 September 2019).

You are hereby given notice that, pursuant to Regulation 42(4) of the 2011 Regulations, unless ALAB otherwise directs, where an applicant for consent for 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 by ALAB, the application shall be deemed to be withdrawn.

Yours faithfully



Mary O'Hara  
Secretary to the Board

Cúirt Choill Mhínsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTWS

Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTWS

An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



Ms Catherine McManus  
MOWI Ireland, formerly Bradán Fanad Teo  
t/a Marine Harvest Ireland,  
Kindrum,  
Fanad,  
Letterkenny,  
Co. Donegal

16 September 2019

Our Ref: AP2/1-14/2015

**Re: Appeal against the decision of the Minister for The Department of Agriculture, Food and the Marine to GRANT an aquaculture and foreshore licence for the cultivation of Atlantic Salmon; *Salmo Salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork Site Ref: T05/555**

Dear Ms McManus,

I refer to your request for an extension to the deadline of 21 September 2019 for furnishing the Appropriate Assessment as requested in my letter of 20 June 2019.

The Board have considered your request and I can confirm that the extension sought to 31 October 2019 is acceptable.

Yours sincerely

Mary O'Hara  
Secretary to the Board

Cúirt Choill Mhínsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5

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MOWI Ireland,  
formerly Brádan Fanad Teo  
t/a Marine Harvest Ireland  
Kindrum,  
Fanad,  
Letterkenny,  
Co. Donegal

23 March 2020

Our Ref: AP2/1-14/2015  
Site Ref: T05/555 Shot Head, Bantry Bay, Co Cork

**Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to the conditions/grant of Aquaculture Licence to Bradán Fanad Teo t/a Marine Harvest Ireland, Kindrum, Fanad, Letterkenny, Co. Donegal on site Ref: T05/555 for the cultivation of Atlantic Salmon; *Salmo Salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork**

Dear Sirs

I refer to the appeals received by ALAB in relation to Aquaculture Licence for the cultivation of Atlantic Salmon; *Salmo Salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork.

The Aquaculture Licences Appeals Board (the "Board") has considered the Natura Impact Statement furnished by you on 18 October 2019 (the "NIS").

Pursuant to Regulation 42(3)(b) of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, the Board may give notice in writing to the applicant, directing him or her to furnish any additional information it considers necessary for the purposes of Regulation 42 ('Screening for Appropriate Assessment and Appropriate Assessment of implications for European Sites').

The Board notes the NPWS guidance (<https://www.npws.ie/protected-sites/guidance-appropriate-assessment-planning-authorities>), which states at paragraph 2.6:

*"The NIS should include information on the plan or project, its location, extent and receiving environment, the Natura 2000 sites, their conservation objectives and ecological and environmental sensitivities, and the likely or potential effects of the plan or project. If the NIS is deficient or incomplete those deficiencies must be remedied fully by the supply of additional data, information or analysis before authorisation may be considered. All documentation needs to be retained so that if questions arise subsequently, evidence of the*

*process followed will be to hand, i.e. an audit trail. Such material is crucial if litigation arises in the national courts or the ECJ, and for reporting to the Commission as required under the Directives."*

and at paragraph 3.1:

*"Stage 2. Appropriate Assessment. This stage considers whether the plan or project, alone or in combination with other projects or plans, will have adverse effects on the integrity of a Natura 2000 site, and includes any mitigation measures necessary to avoid, reduce or offset negative effects. The proponent of the plan or project will be required to submit a Natura Impact Statement, i.e. the report of a targeted professional scientific examination of the plan or project and the relevant Natura 2000 sites, to identify and characterise any possible implications for the site in view of the site's conservation objectives, taking account of in combination effects."*

The Board notes that the NIS did not make clear reference to the conservation objectives (COs) of the *Natura 2000* sites under consideration and did not provide satisfactorily explicit statements in respect of a determination of whether the project would have an adverse impact on the COs of any site, taking into account cumulative effects. While the Board is aware that site-specific COs have not been established for any of the SPA sites connected to Bantry Bay at this time, it would, however, expect that, as a minimum, the generic COs currently provided by NPWS would provide a basis on which to make an explicit determination.

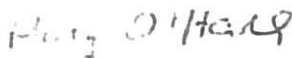
The Board is therefore seeking a revision of the NIS to address the issue referred to above in compliance with the appropriate guidance.

The Board requires this information within 30 days of receipt of this letter.

Please note that if the information specified above is not received before the expiration of the period specified above, or such later period as may be agreed by the Board, the Board will, without further reference to you, determine the appeal.

We await hearing from you.

Yours sincerely,



Mary O'Hara  
Secretary to the Board

An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



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formerly Brádan Fanad Teo  
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Kindrum,  
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Letterkenny,  
Co. Donegal

8 June 2020

Our Ref: AP2/1-14/2015  
Site Ref: T05/555 Shot Head, Bantry Bay, Co Cork

**Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to the conditions/grant of Aquaculture Licence to Bradán Fanad Teo t/a Marine Harvest Ireland, Kindrum, Fanad, Letterkenny, Co. Donegal on site Ref: T05/555 for the cultivation of Atlantic Salmon; *Salmo Salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork**

Dear Sirs

I refer to the appeals received by ALAB in relation to Aquaculture Licence for the cultivation of Atlantic Salmon; *Salmo Salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork. I refer also to the Natura Impact Statement furnished by you on 18 October 2019 and the updated Natura Impact Statement furnished on 20 April 2020 in response to the Board's section 47 Notice dated 23 March 2020 ("the NIS").

The Aquaculture Licence Appeals Board has considered the documentation furnished. Pursuant to Section 47(1) (a) of the Fisheries (Amendment) Act, 1997, where the Board is of the opinion that any document, particulars or other information is or are necessary for the purposes of enabling the Board determine the Appeal it may serve a notice on any person who has made submission or observations to the Board in relation to the Appeal.

Following consideration of the NIS, the Board is of the opinion that the submitted NIS has not fully satisfied the assessment requirements as set out in the appropriate national guidelines.

We refer to the following NPWS guidance (<https://www.npws.ie/protected-sites/guidance-appropriate-assessment-planning-authorities>), as adopted as specific requirements under the Planning and Development Act (Amendment) 2010: Section 177T:

*"The NIS should include information on the plan or project, its location, extent and receiving environment, the Natura 2000 sites, their conservation objectives and ecological and environmental*

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Furthermore, the concluding statement only appears to refer to "*other current floating aquaculture operations in Bantry Bay*" in fulfilment of the requirement to consider cumulative impacts, while previous sections of the NIS detail other potential sources of impact.

The Board requires the NIS to make explicit determinations with respect to:

- (a) potential impacts on the Conservation objectives for each SPA site, taking into account in combination effects; and
- (b) for all potential sources of impact identified in the NIS, taking into account in combination effects.

In accordance with section 47 (1) (a) of the Act, the Board requires this information no later than 30 days of receipt of this letter.

Please note that if the documents, particulars or other information specified above is not received before the expiration of the period specified above, or such later period as may be agreed by the Board, the Board will, without further reference to you, determine the appeal.

We await hearing from you.

Yours sincerely,



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Mary O'Hara  
Secretary to the Board



Mary O'Hara  
Secretary to the Board  
Aquaculture Licences Appeals Board  
Kilminchy Court  
Dublin Road  
Portlaoise  
Co. Laois. R32 DTW5

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09.06.2020

RINMORE

**Your Ref. AP2/1-14/2015**

**Site Ref: T05/555 Shot Head. Bantry Bay, Co. Cork.**

Dear Mary,

We seek clarification of your instructions, sent by letter dated 8<sup>th</sup> June 2020, under Section 47(1) (a) of the Fisheries (Amendment) Act, 1997 re the NIS furnished to the Board, as amended, concerning the above site.

It is our understanding that your original letter, of 20<sup>th</sup> June 2019, requiring compilation of the NIS, arose from the findings of a Stage 1 Screening Assessment, commissioned by you, which concluded that;

- *Taking into consideration all of the material that has been prepared to date, and in reviewing the nearby SPAs and their SCIs, it is not possible to rule out potential impacts of the proposed development at Shot Head on Fulmar SCIs (Beara Peninsula SPA, Iveragh Peninsula SPA, Deenish Island and Scariff Island SPA), Gannet SCIs (The Bull and The Cow Rocks SPA and Skellig's SPA) and Guillemot SCI (Iveragh Peninsula SPA). Therefore, it is recommended that the assessment progress to a Stage 2 Appropriate Assessment.*

In the body of the Screening Assessment, other SCIs of the seven adjacent local SPAs assessed, are specifically ruled out from any prospect of being impact targets for the proposed development, these being Chough, Peregrine, Storm Petrel, Puffin and Lesser Black-backed Gull. Other SCIs of the seven SPAs are not specifically mentioned in the Assessment from the point of view of potential exposure to impacts, these being Herring Gull, Shag, Black Guillemot, Great Black-backed gull, Manx Shearwater, Arctic Tern, Razorbill and Kittiwake.

We read from this at the time that the NIS should limit itself to considering the potential exposure to impacts from the proposed site on the three species highlighted in the Assessment (Fulmar, Common Guillemot and Northern Gannet) alone.

At the time, a section of your original letter of 20<sup>th</sup> June 2019 also seemed to us to confirm this

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		WEBSITE <a href="http://mowi.com">http://mowi.com</a>



We reiterate our own view that the Stage 1 Screening assessment does not seek all SCIs to be similarly assessed in its conclusions, stating that;

*..... in reviewing the nearby SPAs and their SCIs, it is not possible to rule out potential impacts of the proposed development at Shot Head on Fulmar SCIs (Beara Peninsula SPA, Iveragh Peninsula SPA, Deenish Island and Scariff Island SPA), Gannet SCIs (The Bull and The Cow Rocks SPA and Skellig's SPA) and Guillemot SCI (Iveragh Peninsula SPA).*

With Regards

A handwritten signature in cursive script that reads 'Catherine McManus'.

Catherine McManus

TECHNICAL MANAGER

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



MOWI Ireland,  
formerly Brádán Fanad Teo  
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11 June 2020

Our Ref: AP2/1-14/2015  
Site Ref: T05/555 Shot Head, Bantry Bay, Co Cork

**Re: Appeal against the decision by the Minister for Agriculture, Food and the Marine to the conditions/grant of Aquaculture Licence to Bradán Fanad Teo t/a Marine Harvest Ireland, Kindrum, Fanad, Letterkenny, Co. Donegal on site Ref: T05/555 for the cultivation of Atlantic Salmon *Salmo salar* on a site on the foreshore at Shot Head, Bantry Bay, Co Cork**

Dear Sirs

I refer to your clarification request dated 9 June 2020 with reference to request No. 2 of the Notice dated 8 June 2020 issued by the Board pursuant to section 47(1)(a) of the Fisheries (Amendment) Act, 1997 (as amended).

By way of clarification, the Board requires explicit determinations in respect of the impacts of the proposed project on the conservation objectives for each SPA considered within the NIS in relation only to those SCI's identified as possibly being at risk, as outlined in the Board's Notice dated 20 June 2019 and as detailed in the AA screening (Crowe, 2019):

- Beara Peninsula SPA – FULMAR
- Iveragh Peninsula SPA – FULMAR, GUILLEMOT
- Deenish and Scarriff Islands SPA – FULMAR
- Bull and Cow Rocks SPA – GANNET
- Puffin Island SPA – FULMAR
- Skelligs SPA – GANNET, FULMAR, GUILLEMOT

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The Board acknowledges that the NIS is required to only consider those species, but requires the NIS to address the particular conservation objectives for those species notwithstanding the published Conservation Objectives for each SPA are generic, as they do apply to unique species or a mix of unique species for each host SPA.

We await hearing from you.

Yours sincerely,



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Mary O'Hara  
Secretary to the Board