

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Numbers: **AP2/2018**

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 **Lough Swilly Wild Oyster Society Limited** against the decision of the Minister for Agriculture, Food and the Marine (“the Minister”) to grant Aquaculture Licences (and accompanying foreshore licences) to **Lough Swilly Shellfish Growers Co-Operative Society Limited** of Lough Swilly, Co. Donegal for the cultivation of Mussels/Pacific Oysters on site references T12/37 A1, T12/37 A2, T12/37 B1, T12/37 B2, T12/37 B3, T12/37 B4 and T12/37 C

AND WHEREAS the Board in considering the appeal took account of the appeal file provided to it by the Minister, observations received from the Minister on 23 April 2018 pursuant to Section 44 (2) of the Act, the response to a Notice issued by the Board pursuant to Section 46 of the Act, 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, or 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 appeal at its meetings on the 19 February 2018, 1 May 2018, 12 June 2018, 28 August 2018, 9 October 2018, 14 November 2018, 11 December 2018 and on 22 January 2019.

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

- the Environmental Impact Screening Assessment dated 13 October 2015 conducted on behalf of the Minister;
- the Appropriate Assessment dated March 2013 on the impacts of aquaculture activities to sensitive habitats, species and birds within Lough Swilly; and
- the recommended mitigation measures contained in the Minister's decision, including the significant reduction in size to prevent overlap with '*Ostrea edulis* dominated community' and the stipulation that the cultivation of pacific oysters is conditional on the use of triploid seed.

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

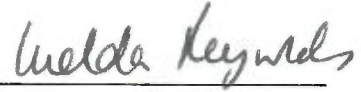
- (a) that the sites are suitable for the proposed development given the footprints of the sites have been significantly reduced and for the following reasons:
1. the species to be farmed (Pacific oyster *Magallana gigas* and Mussels *Mytilus edulis*) have been and are currently being grown successfully at a number of sites within Lough Swilly;
 2. suitable levels of plankton occur naturally at the location and shellfish cultivation at this scale will not result in limiting plankton growth or abundance;
 3. the development is not out of scale relative to other operators in the bay;

4. the development can be considered as minor and reversible as all trestles/poles can be removed from the foreshore; and
 5. the development will not need additional infrastructure developments (e.g. new roads, landing facilities);
- (b) the proposed aquaculture is not likely to have a significant impact on other users;
 - (c) it is not foreseen that the proposed aquaculture would impact on current or potential development plans within their vicinity;
 - (d) the proposed aquaculture on each site would have a non-significant positive impact on the economy of the area;
 - (e) given the implementation of the mitigation measures recommended in the Appropriate Assessment, the proposed aquaculture was not likely to have a significant impact on the integrity of the Lough Swilly SAC and Lough Swilly SPA. In this regard the board determined that the Appropriate Assessment dated March 2013 adequately determined the impacts of aquaculture activities to sensitive habitats, species and birds within Lough Swilly;
 - (f) that the environmental effect of the proposed aquaculture activity was not likely to be significant and in this regard the Board determined that the Environmental Impact Screening Assessment dated 13 October 2015 adequately assessed the significance of the potential impacts of the proposed aquaculture activities and whether they should be subject to an Environmental Impact Assessment (EIA) and concluded that no EIA was required; and
 - (g) the proposed aquaculture activity was not likely to have any significant impact on man-made heritage , either terrestrial or marine, in the area.

Having considered all the foregoing, the Board determined at its meeting on 22 January 2019, pursuant to Section 40 (4) (a) of the Act, to **CONFIRM** the decisions of the Minister made on 30 November 2017 to grant aquaculture licences to the Licensee for the above sites, including the terms and conditions set out in the Minister's draft licences.

Dated this 19 day of February 2019

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



Imelda Reynolds
Chair



Michael Sweeney
Deputy Chair