

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 10/2018**

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 Mr Charlie McHugh & Mr Vincent McGavigan ("**the Applicants**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to refuse to grant an Aquaculture Licence (and accompanying foreshore licence) for the cultivation of Pacific Oysters using bags and trestles on the eastern portion of Loughros Beg Bay, Co Donegal on Site T12/431 ("**the Site**")

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, and the Applicants response dated 7 August 2019 to a Notice dated 26 July 2019 issued by the Board to the Applicants pursuant to section 46 of the Act.

The Board considered the Appeal 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.

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

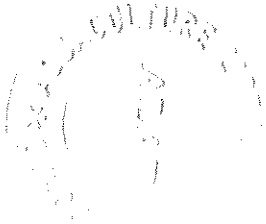
- Section 4 of the Fisheries and Foreshore (Amendment) Act, 1998 ("**the 1998 Act**") provides that an application for an aquaculture licence shall not be accepted, or if accepted shall not be determined, if the applicant or any person on behalf of the applicant commences to engage in aquaculture at the place or waters to which the application relates before a licence is granted under the Act;

- a third-party observation on the Appeal stated that the Applicants had already erected trestles and had been using part of the Site for oyster farming for a considerable length of time;
- the Board's technical advisor inspected the Site during the course of the Appeal and confirmed to the Board that part of the site had oyster trestles on it on the date of the inspection;
- the Appeal file received by the Board from the Department of Agriculture, Food and Marine indicated that previous site inspections had indicated that the Applicants had extended their existing farm and the Marine Engineering Division found some oyster development on the Site. The file further noted the Applicants were informed of the importance of complying with the terms and conditions of existing licences and that trestles on unlicensed areas should be removed;
- on 26 July 2019 the Board issued a Notice to the Applicants pursuant to s.46 of the Act seeking submissions or observations from the Applicants in relation to the evidence before the Board that they had commenced to engage in aquaculture at the place or waters to which the application related before a licence was granted under the Act and that in such circumstances, pursuant to section 4 of 1998 Act, the application should not be determined;
- the Applicants response of 07 August 2019 to the s.46 Notice did not dispute that the Applicants had commenced to engage in aquaculture at the place or waters to which the Application related before a licence has been granted under the Act.

Taking account of the foregoing matters the Board is satisfied on the evidence that the Applicants had commenced to engage in aquaculture and accordingly the Board determines, in accordance with section 4 of the Fisheries and Foreshore (Amendment) Act 1998, that it shall not determine the Appeal as the Applicants commenced to engage in aquaculture at the place or waters to which the Appeal (an application) relates before a licence was granted under the Act.

Dated this 4 day of November 2019

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



Imelda Reynolds

Imelda Reynolds
Chair

Michael Sweeney

Michael Sweeney
Deputy Chair