

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 11/2018**

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 Sheila McFerran and others ("**the Appellant**") against the decision of the Minister for Agriculture, Food and the Marine ("**the Minister**") to grant an Aquaculture and Foreshore Licence to for the cultivation of Pacific Oysters using bags and trestles on the eastern portion of Loughros Beg Bay, Co Donegal on Site T12/498A to Barry McGuinness of Largy, Killybegs, Co.Donegal ("**the Applicant**")

AND WHEREAS the Board in considering the appeal took account of the appeal, the file provided to it by the Minister, the observation of the Applicant, 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 appeal at its meetings on the 9 October 2018, 14 November 2018, 11 December 2018, 22 January 2019, 26 March 2019, 30 April 2019, 15 May 2019, 25 June 2019, 9 October 2019, 14 November 2019, 10 December 2019 and 31 January 2020.

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

- The recommendation of its technical advisor that, given the conclusions of the EIA screening and the Landscape and Visual Impact assessment undertaken by the Minister, coupled with information gathered by the Board's technical advisor during the course of the appeal, the proposed aquaculture is not likely to have a significant effect on the environment and that an environmental impact statement is therefore not required. Board noted this recommendation and itself determined that no environmental impact assessment is required;

- The Appropriate Assessment Conclusion Statement by the Minister to the effect that the proposed cultivation will have no significant effects, either individually or cumulatively, on the conservation objectives of the Natura 2000 network. The Board determined the Minister's conclusion Statement was adequate in terms of the impact of the proposed aquaculture.

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

- (a) That the site is suitable for the proposed development for the following reasons:
 - Oysters are already being cultivated in the bay successfully; and
 - The site has been examined by Marine Engineering Division of the Department of Agriculture, Food and the Marine and revisions had been made to site size and trestle layout as well as management recommendations to improve oyster growth in the area.
- (b) The proposed development has a non-significant impact on the possible other uses or users of the area for the following reasons:
 - It is located away from main areas of activity on the beach;
 - There is no spatial overlap with fishery or harvesting interests.
- (c) The proposed development has a non-significant adverse impact on the statutory status of the area for the following reasons:
 - Although visual impact is rated as up to moderate from four of five receptor sites T12/498A is considered within acceptable limits.
 - No impact on the Natura 2000 network is predicted.
- (d) There will be a non-significant positive effect on the economy of the area for the following reasons:

- This will be a small oyster farm with ability to support a few local jobs only.
- (e) There is a non-significant effect on the natural habitats, wild fisheries and fauna and flora of the area as a result of the proposed operation and no impacts on other birds or cetaceans were identified.
- (f) There are no significant general environmental effects as a result of the proposed development for the following reasons:
- Oyster cultivation may drive improved water quality in the area;
 - The risk of invasive species can be mitigated with licencing conditions.
- (g) There is no effect on the man-made heritage of value in the area as a result of the proposed operation

Having considered all the foregoing, the Board determined at its meeting on 31 January 2020, pursuant to Section 40 (4) (c) of the Act to grant, with variation, an aquaculture licence to the Applicant, in accordance with all the same terms and conditions as contained in the form of aquaculture licence proposed to be granted by the Minister on 2 August 2018 but with the inclusion of the following special condition

"A central Channel width of 15m minimum is to be maintained on the site in order not to obstruct migratory fish movement. The Licensee shall notify the Marine Engineering Division at the Department of Agriculture, Food and the Marine annually of the location of the channel and any associated markings and consider with the Marine Engineering Division whether relocation of trestles is required to ensure the appropriate channel remains."

in lieu of the special condition listed at number 5 of Schedule 4 of the Minister's draft Aquaculture Licence.

Dated this *31* day of *January* 2020

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



A handwritten signature in blue ink, which appears to read "Imelda Reynolds", is written above a horizontal line.

Imelda Reynolds
Chair

A handwritten signature in black ink, which appears to read "Michael Sweeney", is written above a horizontal line.

Michael Sweeney
Deputy Chair

