

AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP9/2018**

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. Killian Tighe and Mr. Marc Perdriel ("the Applicants") against the decision of the Minister for Agriculture, Food and the Marine ("the Minister") to refuse to grant an Aquaculture Licence to the Applicants and to Mr. Michel Mousset for the cultivation of Oysters in the intertidal part on the foreshore at Ballymacoda Bay, Co Cork on Site T05/545A ("the Site")

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 dated 28 February 2020, the Environmental Impact Assessment Screening dated 4 December 2019, the Ballymacoda Bay SPA Assessment of Aquaculture Activities under Article 6 of the Habitats Directive carried out for the Minister in December 2016 and the supplementary Appropriate Assessment Screening carried out for the Board dated December 2019 as well as 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 (as amended), 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, 31 January 2020 and 26 February 2020.

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

- (a) The site is **suitable** for the proposed development;
- (b) The proposed development has a **non-significant impact** on the possible other uses or users of the area;
- (c) The proposed development has a **potential significant impact** on the statutory status of the Ballymacoda Bay Special Protection Area ("**the SPA**") as the development of the Site is, in the opinion of the Board, likely to cause increased impacts to Qualifying Interests of the SPA which have already been subject to significant impacts from existing licensed aquaculture sites and accordingly, under the Habitats Directive, the proposed development cannot proceed on the basis of cumulative impact;
- (d) There will be a **non-significant positive effect** on the economy of the area;


- (e) There are **potential significant impacts** on natural habitats, wild fisheries and fauna and flora of the area. The Minister's Appropriate Assessment screening found that the proposed aquaculture activity at the Site is not consistent with the conservation objectives for the SPA. According to that screening, the new applications had the potential to result in significant adverse impact on the following Special Conservation Interest (SCI) species of the SPA: Wigeon, Ringed Plover, Grey Plover, Sanderling, Black-tailed Godwit and Bar-tailed Godwit. Thus, the licensing of aquaculture activity at the Site would adversely impact the conservation objectives of the SPA. The Board considered that the Minister's screening involved an assessment of the cumulative impacts of bird displacement by all of the applications in the SPA, and that the conclusion of significant displacement of many birds was considered inevitable as the combined new applications proposed that 154.97 hectares would be occupied by trestles of a wetland of 602 hectares of intertidal habitat. The Board noted that the Site was relatively small at 11.2439 hectares and comprised less than 2% of the 602 ha of wetland habitat identified for the SPA. The Board therefore commissioned a further Appropriate Assessment Screening be conducted for the Site alone. The conclusions of the Supplemental Screening agreed with the conclusion of the Minister's Screening and identified potential significant impacts of the Site in combination with the existing three licences at the SPA as having potential significant cumulative impacts on the conservation objectives of the SPA.
- (f) There are **no significant general environmental effects** predicted for the Site which could not be mitigated by the inclusion of conditions in any licence granted; and
- (g) There is **no significant impact** on the man-made heritage of value in the area.

The Board commissioned an Environmental Impact Assessment Screening which concluded that no Environmental Impact Assessment was required in respect of the application for a licence for the Site.

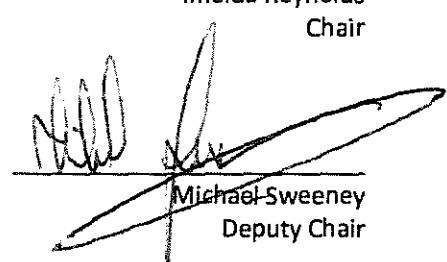
Having considered all the foregoing, the Board determined at its meeting on 26 February 2020 pursuant to Section 40 (4) (a) of the Act, to **CONFIRM** the decision of the Minister to refuse to grant an aquaculture licence to the Applicant for the Site.

Dated this *2nd* day of *March* 2020

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



Imelda Reynolds
Chair



Michael Sweeney
Deputy Chair

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Mr Michael Creed T.D.
Minister for Agriculture, Food and the Marine
Agriculture House
Kildare Street
Dublin 2

3 March 2020

Our Ref: AP9/2018
Site Ref: T05/545A

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to refuse to grant an Aquaculture Licence to Mr Killian Tighe, Mr Marc Pedriel and Mr Michel Mousset, c/o Utterly Oysters Ltd, Rossleague, Cobh Co Cork for the cultivation of Oysters in the intertidal part on the foreshore on Site T5/545A at Ballymacoda Bay, Co. Cork.

Dear Minister

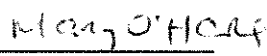
I refer to the Appeal received in relation to the above Licence.

The Aquaculture Licences Appeals Board ("the Board") concluded its determination of the above appeal on 31 January 2020 and determined, pursuant to section 40(4)(a) of the Fisheries (Amendment) Act 1997 to confirm your decision to refuse the Licence, and accordingly the Appeal has been disallowed.

The reasons for the Board's determination are set out in detail in the Determination dated 2 March 2020, a copy of which is enclosed with this letter.

A copy of the Board's Technical Advisor's report and other reports referred to in the Determination are available on the ALAB website.

Yours sincerely,


Mary O'Hara
Secretary to the Board

cc Mr John Quinlan, Aquaculture and Foreshore Management Division

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Mr. Killian Tighe
Alms House
Roches Terrace
Cobh
Co. Cork

3 March 2020

Our Ref: AP9/2018
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Dear Mr Tighe

I refer to the Notice of Appeal regarding the above decision of the Minister for Agriculture, Food and the Marine.

The Aquaculture Licences Appeals Board ("the Board") concluded its determination of the above appeal on 31 January 2020 and determined, pursuant to section 40(4)(a) of the Fisheries (Amendment) Act 1997, to confirm the decision of the Minister to refuse the Licence, and accordingly your Appeal has been disallowed.

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Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mary O'Hara', is written over a horizontal line.

Mary O'Hara
Secretary to the Board

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board



Mr. Marc Perdriel
SAS Les Coquillages De La Baie D'Isigny
La Dune
14230 Gefosse Fonrenay
France

3 March 2020

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Site Ref: T05/545A

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Dear Mr Perdriel

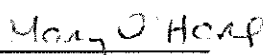
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Yours sincerely,


Mary O'Hara
Secretary to the Board