AQUACULTURE LICENCES APPEALS BOARD

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

Appeal Reference Number: **AP 26/2019**

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 Save Our Bay Dungloe ("**the Appellant**") against the decision of the Minister for Agriculture, Food and the Marine (**"the Minister"**) to grant a variation Aquaculture Licence to Donegal Oceandeep Oysters Ltd., ("**the Applicant**") for the cultivation of Pacific Oysters using bags and trestles on the intertidal foreshore on Site Ref: T12/545 within Dungloe Bay, Co. Donegal (**"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 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 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 10 December 2019, 31 January 2020, 26 February 2020, 22 April 2020, 15 May 2020 and 11 June 2020, 9 July 2020, 6 August 2020, 10 September 2020, 8 October 2020, 5 November 2020, 10 December 2020, 12 January 2021 and determined at its meeting on 5 February 2021 pursuant to Section 40(4)(b) of the Act, to **UPHOLD** the appeal and **REFUSE** to grant an Aquaculture Licence to the Applicant.

In reaching its determination on the Appeal the Board considered and determined as follows:

Environmental Impact Assessment

The Board considered the proposed aquaculture at the Site and its potential impact on human beings, flora and fauna; soil, water, air, climate and the landscape; material assets and the cultural heritage; and the interaction between these factors and having done so determined that the proposed aquaculture is unlikely to have significant effects on the environment by virtue of inter alia, its nature, size or location and as such an environmental impact assessment in accordance with S.I. 468 of 2012 was not required.

Appropriate Assessment

The Board adopted the Appropriate Assessment undertaken by the Marine Institute (**AA**) for the Rutland Island and Sound SAC (site code 002283) (the **SAC)** dated August 2019, which includes the Site. The Board noted the AA Conclusion Statement with regard to harbour seals, a qualifying feature of the SAC, that there is scientific uncertainty as to the impacts on maintaining favourable conservation status for harbour seals within the SAC by granting new aquaculture licences and that the main aspect of the culture activities that could potentially impact the harbour seals is the overlap and close proximity of a number of application sites and access routes with known moulting sites; the Board further noted the recommendation of the AA Conclusion Statement that a set distance of approximately 200m be maintained between licenced areas and seal haul out locations. It also noted that mitigation measures for some new sites and access routes be site specific with some sites clearly presenting a risk of disturbance that cannot be easily mitigated.

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

(a) The Site is **not suitable** for intertidal oyster culture for the following reasons:

1. The SAC is of national importance for the Harbour seal supporting 7% of the national population. All aspects of this species life cycle occur within the SAC, resting, feeding, moulting and pupping. Harbour seals are found within the SAC year-round. Noting the AA Conclusion Statement, the proposed westerly access route to the Site cannot pass harbour seal habitat at a great enough distance to prevent disturbance of seals utilising this habitat.
2. The licensing of the Site will impact navigation to and from Dungloe Pier at various states of tide.

(b) The granting of a licence to the Site would have **significant impacts** on other users of the Site for the following reasons:

1. Due to its location, the proposed development is likely to affect the

Recreational and amenity value of the Site for a range of other users including watersports, leisure boaters and general navigation.

2. Displacement of seals could reduce the use of the inner harbour habitat areas so reducing the ecological value of the area and its tourism value.
3. The visual impact of the development is likely to negatively impact the amenity value of views of the inner Dungloe Bay at low water.

(c) The proposed Site would have a **significant adverse** impact on the statutory status of the area for the following reasons:

1. The licencing of the Site has the potential to adversely impact the conservation objectives for the harbour seal within the SAC.
2. Several recognised seal haul out sites are located in the vicinity of the westerly access routes to the Site.
3. Disturbance at the Site is contrary to the conservation objectives for the SAC.

(d) The proposed development would have a **significant adverse** impact on the ecology of the area for the following reasons:

1. It is likely that displacement of seals from moulting habitat would occur through disturbance from licensing the Site.
2. Access routes to the Site pass within the Marine Institute recommended minimum 200m buffer zone of known haul out habitat and would lead to access related disturbance.

(e) Licencing of the Site would have significant positive economic impact on the local economy; would have no significant impacts on general environmental effects (by implementing mitigation measures requiring the use of triploid seed only); and would have no effect on the man-made heritage of the area.

Having considered all the foregoing, the Board determined the Appeal pursuant to Section 40 (4)(b) of the Act, by determining to **UPHOLD** the appeal and **REFUSE** to grant an aquaculture licence to the Applicant.

Dated this 19 day of February 2021

The affixing of the Seal of the

AQUACULTURE LICENCES APPEALS BOARD

was authenticated by: -

Imelda Reynolds

Chair

Michael Sweeney

Deputy Chair