

AQUACULTURE LICENCES APPEALS BOARD

BOARD MEETING 18.01

Portlaoise

19 February 2018

Meeting commenced at 5pm and concluded at 9pm

Minutes

Present: Imelda Reynolds (Chairperson), Sean Murphy, Michael Sweeney, Brendan Brice, Jim Power

Apologies: Prof Owen McIntyre

In attendance: Mary O'Hara, Board Secretary of ALAB, Margaret Brennan (ALAB); Sylvia Boylan (Anne Brady McQuillans DFK Accountants) attended for Item 14. Graham Saunders c (Technical Advisor) attended by conference call for Items 9 and 10. The Chair welcomed Sean Murphy and Michael Sweeney back to the Board following their respective reappointments by the Minister.

18.01.01 - Conflicts of Interest

Subject to the matters below, all Board members confirmed that they had no conflict of interest in any of the matters before the Board for consideration at the meeting.

Brendan Brice confirmed he would depart the meeting when Items 9 (AP2/2015 Shot Head) and 10 (API-4/2017 and AP6/2017 Braade Strand) were being discussed, to avoid conflict of interest and any perception of bias.

The Secretary confirmed redacted papers in respect of these Appeals had issued to Brendan Brice.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18.01.09 - AP2 12015 Shot Head Bantry Bay

Board member Brendan Brice recused himself for this item. Graham Saunders, the Board's Technical Advisor for this Appeal, joined the meeting via conference call.

The Secretary indicated to the Board that she would reply to letter dated 25 January 2018 received from one of the appellants, Save Bantry Bay, in response to the Board's letter of 20 December 2017, as pursuant to s. 45(4) of the 1997 Act, there is no provision for the Board to consider any elaboration or further submission or observations in relation to an appeal save in response to requests issued pursuant to Sections 46 or 47 of the Act. It was noted that the letter would not be considered by the Board.

The Board noted the following:

- Notices dated 20 December 2017 from ALAB to all appeal parties extending the date for determination of this Appeal to 31 October 2018.
- S.47 Notice dated 12 January 2018 issued to Marine Harvest Ireland, with a response to be filed by 31 March 2018;
- Report dated 24 November 2017 comprising an Otter impact assessment prepared by Graham Saunders for ALAB ;
- Report dated 1 February 2018 comprising a Common Seal Impact Assessment prepared by Alex Coram of St Andrew's Marine Research for ALAB;
- Report dated 5 February 2018 comprising a Bird impact assessment prepared by Dr Tom Gittings for ALAB;

The Board noted the conclusion of its Technical Advisor that on the basis of scientific evidence the operation of a fish farm at Shot Head is unlikely to negatively impact the conservation status of the population of harbour seals within the Glengarriff Harbour and Woodland SAC. This Opinion was accepted by the Board.

## Wild Bird Impact Assessment

### Evaluation of the EIS

The Board noted the conclusion of the Technical Advisor in the impact assessment dated 5 February 2018 that the EIS for the proposed fish farm site contains a very superficial assessment of potential impacts on bird populations and does not make any reference to the Bull and the Cow Rocks SPA. While there is some discussion of the potential for various birds to be attracted to the fish farm site, the discussion appears to be framed more in the context of predator control, rather than the impact on the bird populations. It is not clear from the EIS what specific anti-predator measures will be deployed and what the likely impacts of these will be on birds. There is mention of the potential that "on very rare occasions, heron and diving gannets may become trapped in bird nets", but no further discussion, or assessment, of this potential impact is provided. There is also no assessment of potential cumulative impacts on birds of the development of the proposed fish farm site in combination with wider aquaculture activity in Bantry Bay. The board noted that overall, therefore, in the context of the present assessment, the EIS does not provide an adequate assessment of potential impacts on all the SPAS for which there is potential for interaction between their SCIS and the proposed fish farm site.

The Board also noted that in a wider context, the Technical Advisors view is that the EIS does not meet the statutory requirements as it does not contain an adequate assessment of potential impacts on bird populations. In particular, the Technical Advisor indicated there are important non-SPA bird populations with higher likelihood of potential impacts (e.g., the non-SPA seabird breeding populations on various islands within Bantry Bay), and an EIS needs to consider all potentially significant impacts, not just impacts to SPAs. In this context, the Board noted the view of the Technical Advisor that the potential impacts to the nationally important Cormorant colony on Sheellane Island from bird mortalities caused by net entanglement and/or lethal control, and potential impacts to the tern colonies on Roancarrigbeg from disturbance (the island lies close to the likely access route to/from the proposed fish farm site) require detailed assessment. Furthermore, the Technical Advisor noted that the EIS also needs to assess potentially positive impacts, as well as negative impacts, such as those that might occur from attraction of birds to the fish farm site.

### Evaluation of the EIA

The Board noted the findings contained in Wild Bird impact assessment that the EIA for the proposed fish farm site contains no assessment of potential impacts on bird populations and does not make any reference to the Bull and the Cow Rocks SPA. It also noted that the Impact Assessment found that the conclusion there is "no potential "source-pathway-target" vector" connecting the proposed fish farm site and the Beara Peninsula SPA is clearly incorrect, as Fulmar are a Special Conservation interest (SCI) of the Beara Peninsula SPA. The impact assessment therefore found that the EIA does not provide an adequate assessment of potential impacts on all the SPAS for which there is potential for interaction between their SCIS and the proposed fish farm site. The board also noted that in a wider context, the EIA is also clearly inadequate as it does not consider important non-SPA bird populations which have the potential to interact with the proposed fish fa

### AA requirements

In relation to the Appropriate Assessment (AA), the Board noted the Technical Advisor's finding that as the EIS and EIA are inadequate, further AA screening is required. It was noted that the briefing note largely contained the information required for this screening. It was further noted that based on the assessment presented, a stage 2 Appropriate Assessment of the potential impact of Gannet mortalities on the Gannet SCI of the Bull and the Cow Rocks SPA might be required.

The Board, having considered the Wild Birds impact assessment fully, agreed that a Section 47 Notice should issue to Marine Institute asking that it respond to the matters raised in the Wild Birds impact assessment. It was agreed that the Board's Technical Advisor should prepare a draft Notice to Marine Institute seeking a fuller assessment of the impact on birds for the purposes of EIS and EIA, and thereafter AA, requiring the following issues to be reviewed and addressed within 28 days of the date of the Notice:

1. Dr Gitting's assessment that the EIA submitted with the Licence Application contains no assessment of potential impacts on bird populations and in particular does not make any reference to the possible interaction with gannet colonies of Bull and the Cow Rocks SPA. The MI should be required to assess the potential impacts of the proposed Aquaculture Licence on bird populations and in particular assess the possible interaction of the proposed Licence with the gannet colonies of Bull and Cow Rocks SPA;
2. Dr Gitting's assessment that the EIA conclusion that there is 'no potential source-pathwaytarget vector' connecting the proposed fish farm site and the Beara Peninsula SPA is incorrect, as the site is within the foraging range of Fulmar, a species of SCI of the Beara Peninsula SPA. The MI should be required to reconsider the EIA conclusion in this regard and either confirm the conclusion of the EIA, providing scientific reasoning and evidence to support the conclusion, or if there is an alternative conclusion, assess the impact of that alternative conclusion and advise if other measures are required;
3. Dr Gitting's assessment that the EIA does not consider important non- SPA bird populations which have the potential to interact with the proposed fish farm site. The MI should be required to assess the potential impacts on important non-SPA bird populations which have the potential to interact with the proposed Aquaculture Licence.
4. Having considered the foregoing, the MI should be required to consider whether a Stage 2 Appropriate Assessment is necessary to evaluate the impact on SPA-associated gannet mortalities.

#### Legal Advice received

The Board noted that legal advice had been obtained from Tim O'Sullivan B.L. in relation to oral hearing fees and in respect of the Board's obligations concerning circulation of reports. In relation to oral hearing fees, advice was sought as to whether fees for oral hearings should be refunded if no oral hearing takes place. The advice received is that a person who requests an oral hearing is not entitled to get their fee back if ALAB decides to determine the appeal without an oral hearing. That is also the case if a person requests an oral hearing for several appeals and pays a fee in respect of each of those appeals but ALAB decides to determine one or more of those appeals without an oral hearing or ALAB carries out a single oral hearing for two or more appeals on the basis that they are being treating as a single appeal pursuant to section 42 of the 1997 Act.

The advice also stated that in an appeal where there are several appellants and only some of them requested an oral hearing and submitted the prescribed fee, the level of participation afforded to the other appellants and other parties or persons that are legitimately at the oral hearing should, in Counsel's view, be driven by what those other appellants, other parties and persons have to contribute to the issues in the appeal and the purpose of the oral hearing. The person who requested the appeal will have something to say but it may very well be that other appellants, parties and persons will have just as much, and maybe even more, to say.

In respect of the circulation of reports, the Board noted that Counsel's advice was that as regards the timing of circulation of the various reports, Article 6(3)(c) of the Directive 2011/92/EU requires that this information be made available to the public concerned within a reasonable time-frame. It would not, in Counsel's view, be unreasonable to wait until all reports are available before circulating them, particularly as they may need to be circulated by way of public notice — in this regard the "public concerned are the same public that was notified that an EIA had been carried out, by way of public notice. However the reports are circulated, the public concerned must be given a reasonable time to consider the reports and comment on them and must be given early and effective opportunity to participate when all options are open to ALAB before it makes its decision

The other parties to the appeals and persons who made submissions or observations should also be directly notified of the reports and this can be done at the same time as the public concerned are notified so that the notification and time for making submission is synchronised between the public, the parties to the appeals and the other observers.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]
- [Redacted]
- [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



3 [REDACTED]  
[REDACTED]  
3 [REDACTED]  
[REDACTED]  
3 [REDACTED]  
[REDACTED]  
3 [REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

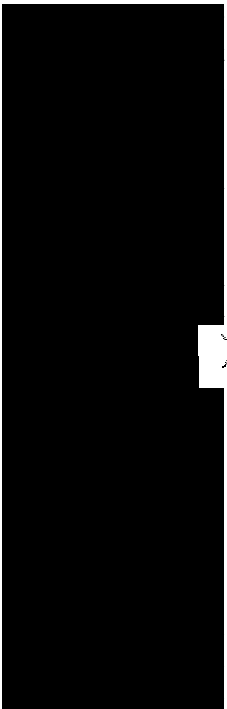
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- 
- 
- 
- 
- 

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

• [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Dated the 1<sup>st</sup> day of May

Imelda Reynolds

2018

Imelda Reynolds

CHAIRPERSON