

AQUACULTURE LICENCES APPEALS BOARD

BOARD MEETING 20.03

Video Conference 8 a.m.

19 March 2020

Minutes

Present: Imelda Reynolds (Chairperson), Michael Sweeney, John Evans, Micheél o Cinnéide
Michael Mulloy, Bill Sweeney

In attendance: Mary O'Hara (Board Secretary of ALAB), Margaret Brennan (ALAB), Ciara Murphy
(AI-AB)

20.03.01 - Conflicts of Interest/Section 31 Declaration

All Board members confirmed that they had no conflict of interest the matters before the Board for consideration at the meeting. For information, John Evans informed the Board that he was employed by The Marine Institute for a period between 2012-2014 and in 2017. Micheél Ö Cinnéide also informed the board that he was employed by The Marine Institute for a period which ended in 2008. The Board considered the matter, noting in particular the provisions of s. 34(8) of the 1997 Act and declared itself satisfied that neither Board member was conflicted.

The Board members and administrative staff confirmed that no communications had been received by any of them for the purposes of influencing improperly the consideration by the Board of any appeals or decisions before the Board at this meeting, in breach of Section 31 of the Act.

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

20.03.03- AP2/1-14/2015 - Shot Head, Bantry Bay, Co Cork (Salmon) (to be determined by 31 March 2020)

The Board noted that the purpose of this Board meeting was to both progress the Shot Head appeals and also review the steps taken to date in respect of the Appeals, and to look at the various reports produced for the appeals so that Board members who have joined the Board recently would be in a position to fully examine and discuss all submissions received and reports produced, and all aspects of the appeals.

NIS

In the first instance, with a view to progressing the Appeal, the Board noted that having considered the NIS furnished by the applicant on 18 October 2019, pursuant to Regulation 42(3)(b) of the European Communities (Birds and Natural Habitats) Regulations 2011, as amended, the Board may give notice in writing to the applicant, directing them to furnish any additional information it considers necessary for the purposes of Regulation 42. The Board noted in particular paras 2.6 and 3.1 of the NPWS guidance relating to Appropriate Assessments, and that the NIS did not make clear reference to the conservation objectives (COs) of the Natura 2000 sites under consideration nor did it provide satisfactorily explicit statements in respect of a determination of whether the project would have an adverse impact on the COs of any site, taking into account cumulative effects. The Board acknowledged that while it was aware that site-specific COs may not have been established for many SPAS in Bantry Bay at this time, it would however expect that, as a minimum, the generic COs currently provided by NPWS would provide a basis on which to make an explicit determination. The Board therefore agreed to seek a revision of the NIS to fully address the issue referred to above

in compliance with the appropriate guidance, and the Secretary was asked to write to the applicant accordingly seeking the information, to be provided within 30 days of receipt of the letter.

Updated Draft TA report

The Chairperson also asked the Secretary to seek an update from Graham Saunders, Technical Advisor to ALAB, regarding his updated draft Technical Advisor Report. The Secretary was also to seek confirmation from Mr Saunders that he had had regard to all the material provided by appellant John Brendan O'Keeffe with his appeal.

Review of Appeal Process to date

The Board then proceeded to review the key issues raised in the appeals and submissions received, along with the Technical Advisor's interim report. The Board also noted that an Oral hearing in respect of this appeal had been held over 4 days and the hearing was constituted in particular to consider the following matters:

- The nature of and the risks to salmonids in the Dromagowlane/Trafrask River;
- The associated impact on the freshwater pearl mussel; and
- The robustness of the Applicant's Integrated Pest Management Plan/Single Bay Management Plan dated 26 October 2016

The Board also considered the Report to the Board of the Oral Hearing from the Chair of the hearing.

This had been chaired by the former Board member Dr. Owen McIntyre. The Board noted that Dr McIntyre had, once he presented his report, recused himself from all deliberations by the Board on the Shot Head appeal, in accordance with the Board's legal advice.

The Board noted that the recommendations in the Report from the Chair of the Oral Hearing. Arising from the actions mandated by the Oral Hearing Chair and a review of the various reports commissioned as a result by ALAB, and with particular reference to the desktop report on Seals, the Board asked that its Technical Advisor confirm, with reference to the issue of seal scarers as quoted in the Seal report, that the SAC distance from the site is 4.5km. The Board noted that NPWS guidelines on Marine Noise will have to be adhered to and the Board should examine the possibility of having this issue addressed in a condition attached to the Licence, if it is granted.

Next Steps

The Board noted that on receipt of the reply from the applicant to the Notice to be issued pursuant to Regulation 42(3)(b) of the 2011 Regulations 2011, the draft supplemental Appropriate Assessment should be capable of being finalised. Thereafter it would be appropriate for the Board to afford all parties to the appeal the opportunity to make submissions or observations to the Board in relation to the appeal supplemental Appropriate Assessment. The Board will do this by issuing a section 46 Notice to all parties.

Thereafter the Board's Technical Advisor will need to further update his draft report taking account of the responses to the section 46 Notice.

The Board will then be in a position to finalise its draft determination on these appeals.

The Board again reviewed the timescale for determination of the appeals and has formed the view it will not be in position to determine them by 31 March 2020. Accordingly, the Board instructed the Secretary to write to the appellants and copy to all parties as provided for in Section 56(3) of the Fisheries (Amendment) Act 1997, that it is the intention of the Board that the Appeal will be determined as soon as practicable and by no later than 31 August 2020 due to the complexities of the appeals. The Secretary will notify the parties to the appeals in this regard.

The Secretary will also update the website to re-order/rename documentation so it is clear and easy for all parties to follow.

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