

Lee Boorman

From: Conroy, Antoinette <Antoinette.Conroy@agriculture.gov.ie>
Sent: Friday 12 November 2021 10:48
To: Lee Boorman
Cc: Rachel Minch; Imelda Reynolds
Subject: RE: ALAB - Internal Review [PLS-worksite.FID267346] [IWOV-worksite.FID267346]

Hi Lee

I understand that the numbering tallies with when Mary started and she began that numbering.

Regards
Antoinette Conroy
Secretary

An Bord Achomharc Um Cheadúnais Dobharshaothraith
Aquaculture Licences Appeals Board
Cúirt Choill Mhínsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

T +353 (0) 057 8631912
R-phost/Email: info@alab.ie
Láithreán Gréasáin/Website: www.alab.ie

From: Lee Boorman <lboorman@philiplee.ie>
Sent: Friday 12 November 2021 10:34
To: Conroy, Antoinette <Antoinette.Conroy@agriculture.gov.ie>
Cc: Rachel Minch <rminch@philiplee.ie>; Imelda Reynolds <i.reynolds@beauchamps.ie>
Subject: RE: ALAB - Internal Review [PLS-worksite.FID267346] [IWOV-worksite.FID267346]

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Dear Antoinette,

Many thanks for providing the board minutes and for completing the redactions. Please now find attached a *draft* internal review decision for your review and then issue with your signature.

Prior to finalising the internal review decision, I would be grateful if you would address a few issues/queries that we have identified with the board minutes that were attached to your email. If there is anything we can do to assist on this please let me know.

Numbering

The majority of the minutes are numbered, beginning with No. 12 (Minutes of Meeting dated 20-10-15). While it is clear that this is the first meeting in which the Shot Head Appeal was discussed, it is not apparent why this is numbered "12". Please confirm why some of the minutes are numbered, so that we might consider whether it is necessary to remove the numbering, or alternatively explain the numbering of the documents in the decision-letter. Our concern is that, if one of these actions are not taken, we anticipate that the requester will seek documents 1-11 on further appeal.

Missing Minutes

Your email below omitted the following sets of minutes which minutes were included in the Composite Document we had previously reviewed:

- 47. ALAB Minutes 26-02-20
- 49. ALAB Minutes 22-04-20
- ALAB Minutes 28-05-21

We would be grateful if you would forward us copies of these omitted minutes so that we might consider whether their inclusion is necessary, and if so, what redactions should be applied.

In addition, the Board minutes numbered "57" appear to be missing. However, it is possible that these do not exist and there was simply a misnumbering. In this regard, minutes no 56 are dated 8 October 2020, and minutes no 58 are 5 November 2020. There were no interviewing minutes in the Composite Document previously reviewed. Nevertheless, please confirm if there are a set of Board Minutes numbered "57".

Minutes not to be released

The requester has sought access to copies of all board minutes in which the Shot Head Determination was discussed. We understand from a review of the Board Minutes provided in your email below and in the Composite Document previously released to this requester, that the following minutes are not relevant to this request:

- 31. ALAB Minutes 05-06-18: The Determination was not discussed at this meeting and it did not form part of the composite document. Accordingly, these minutes need not be provided to the requester.
- 42. ALAB Minutes 26-08-2019: Again, these minutes do not discuss the Determination and did not form part of the Composite Document. Accordingly, these do not need to be released to the requester.
- All further minutes recorded after the Board Meeting of **24 June 2021**: The Board Minutes relating to meetings that took place after the Determination (29 June 2021) so far as we are aware did not form part of the Composite Document released and should not be provided on the foot of this request.

Redactions of Board Minutes

I have attached to this email a final version of the Composite Document, noting which redactions were to be made in respect of each Board Minute extract prior to its release to the requester. These redactions related to legal advice obtained by the Board in the making of the Determination, as well as discussions involving the tendering process.

A number of the redactions that we had identified and suggested be made in to Composite Document were not made in the Board Minutes provided in your below email. If the suggested redactions were in fact made, the information that was being protected is still entitled to protection from disclosure at this point in time, and we would advise carrying those redactions over to the Board Minutes being released with the Internal Review Decision. If, on the other hand, the redactions were not made, we cannot now redact the Board Minutes to protect information that the requester already has accesses to.

Therefore, in the first instance, could you please confirm that the redactions identified in the attached document were applied to the Composite Document released to the requester in the first instance.

Subject to the identified reaction having been made, please replicate them in the Board Minutes provided in your below email. For your ease, I have set out which redactions must be made and on what page of each document they can be found:

13. ALAB Minutes 24-11-15

- Missed redaction: Page 4, paragraph beginning with “The Board noted that although RPS had submitted this preliminary report...”

14. ALAB Minutes 19-01-2016

- Missed Redaction: Page 6: paragraph beginning with: “Given the issues raised by the Appellants in respect of conflict of interest...”

15. ALAB Minutes 07-03-16

- Page 4: Missed redaction re: advice of James Connolly SC & Dennis McSweeney Solicitors per LAP
- Page 5: redactions re: tender table scoring and subsequent paragraph beginning with “On examination of the tender submitted by Altemar...”

16. ALAB Minutes 05-04-2016

- Missed Redaction: Page 4: In paragraph 1 of that page, redact from “The Purpose of the call was to consider...” to the end of that paragraph. React all of paragraph 2 beginning with “Having taken all these matters into consideration...”
- Missed Redaction: Page 5: redact paragraph “The board gave very careful consideration to these allegations...”
- Page 5: Redact bullet point beginning with “Counsel’s advice that the rationale...”

21. ALAB Minutes 07-03-17

- Page 7: Redact part of final paragraph from “... and that a consultation was being arranged with Paddy Cowhey Solicitor” to end of paragraph.

22. ALAB Minutes 05-05-17

- This may be over redacted – to confirm: The following section may have been included in the composite document but has been redacted in these minutes:
“Dr Owen McIntyre returned to the meeting.
The Board noted that it hoped to reconvene the Oral Hearing before the end of June 2017 but this very much depended on the receipt of a comprehensive Counsel's Opinion detailing responses to the Board
It was noted that ALAB has two tax numbers and the Secretary was asked to seek an explanation for this.”
This will be found on page 3.
- Missed redaction: Table on page 5

23. ALAB Minutes 13-06-17

- Missed redaction page 2: Paragraph beginning with “The Board noted that it is anxious to reconvene the oral hearing....”
 - Missed redaction page 3: entire page
 - Missed redaction page 4: paragraph from previous page beginning with “making procedures” and are “entitled to express”....
 - Missed redaction page 4: paragraph beginning with “The Board also noted the general comment of Counsel...”
 - Missed redaction page 4: paragraph beginning with “Paddy Cowhey is to be asked to draft a response to the Barry Doyle letter...”
- 24. ALAB Minutes 19-07-17**
- Missed redaction page 3: paragraph beginning with “The Board also noted fee notes from Paddy Cowhey Solicitor....”
 - Missed redaction: Page 5: Table still shows some words and figures.
- 25. ALAB Minutes 25-08-17**
- Missed redaction: “The Secretary advised that a letter had issued to Paddy Cowhey seeking Counsel's advice in the matter. No reply has been received to date and is awaited.”
- 26. ALAB Minutes 31-10-17**
- Page 5: redact “advice from Tim O’Sullivan
- 28. ALAB Minutes 13-12-17**
- Missed redaction: Page 4: Paragraph beginning with: “The Board noted that it will require legal advice as to....”
- 29. ALAB Minutes 19-02-18**
- Missed Redaction Page 6: all paragraphs under the heading (and including that heading) “Legal Advice Received”.
- 30. ALAB Minutes of 01-05-2018**
- No Issues identified
- 32. ALAB Minutes 12-06-18**
- Missed redaction Page 7: paragraph beginning with “Having considered the forgoing the Board agreed the secretary should seek legal advice...”
- 34. ALAB Minutes 09.10.18**
- Missed redaction page 3: “... with the board noting that the drafts still require to be forwarded for legal advice and signoff. They’ were approved on this basis, and the secretary was asked to procedure legal advice on same.”
- 35. ALAB Minutes 14-11-18**
- Missed Redactions pages 2-3: Redact from “A Draft of the letter which ALAB proposed to issue to Marine Harvest Ireland...” to “(f) provide ALAB with copies of all such notification.”
- 36. ALAB Minutes 11-12-18**
- Missed redaction – page 5: Redact from “Having considered the response, and in anticipation of the ALAB Board meeting, the Secretary had arranged for a legal opinion....” To “4. If ALAB determines that a Screening for AA or, if required, an AA is needed, then it must be ALAB itself that does this and not some other party or entity, e.g. the Department of Agriculture, Food and Marine.”
- 39. ALAB Minutes 30-04-19**
- Missed redaction page 3: paragraph beginning with “the Board authorised the secretary to seek legal advice for ALAB in terms of progressing....”
- 40. ALAB Minutes 15-05-19**
- Missed redaction page 3: “The Legal advice from Tim O’Sullivan BL concerning Stage 2 Appropriate Assessment for Birds, dated 13 May 2019 was noted and discussed by the Board.”
- 41. ALAB Minutes 25-06-19**
- Missed redaction page 5: “A Draft template of the Notice to issue to the Applicant and parties stating that an Appropriate Assessment is required was received from Tim O’Sullivan BL.”
- 43. ALAB Minutes 09-10-19**
- Missed redactions: redact all of page 2 and part of page 3 that does not related to the Shot Head appeals
 - Missed redactions – page 3: redact “and Eco Eireann” in the second paragraph after “19.07.06 – AP2/1-14/2015 Heading”
- 45. ALAB Minutes 10-12-19**
- Missed redaction: Page 9 – figures visible.
- 48. ALAB Minutes 19-03-20**

- Missed redaction: page 3: paragraph 1, redact the words “in accordance with the Board’s legal advice.”

50. ALAB Minutes 15-05-20

- Page 1: redact “Tim O Sullivan BL and Paddy Cowhey Solicitor” from the “In attendance” section
- Missed redactions page 2: “Tim O’Sullivan and Paddy Cowhey joined the meeting”
- Missed redactions page 2: Part of paragraph beginning with “The Board also noted advice from Tim O’Sullivan BL to the effect that whilst it is more unusual to have all issues with an NIS...” to “the Board needs to get the report and then decide whether to adopt it or not.”
- Missed redactions page 2: final paragraph beginning with “The Board agreed to ask Tim O’Sullivan....”

54. ALAB Minutes 04-09-20

- Missed Redaction page 1: Redact “Tim O’Sullivan, Barrister-at-Law, & Paddy Cowhey, Solicitor” from the “In Attendance” Section
- Missed Redaction page 1: redact “Tim O Sullivan BL and Paddy Cowhey solicitor also joined the meeting via Zoom video call to advise the Board.”
- Missed redactions page 1-2: redact the following sentence/paragraphs:
“...The Secretary will finalise the Section 46 notices in conjunction with the legal advisors. The Board agreed, following consultation with the legal advisors, that 45 days is an appropriate length of time for such responses.

The Board further noted the advice from Tim O Sullivan BL that although not strictly necessary, it would be prudent for the Board to follow the Public Participation Directive by inviting Public consultation in respect of both the NIS and the MERC Assessment report. This would be done by publishing notices in the newspapers where notices concerning the application were previously published. The notice will also appear on ALAB’s website. The Board accepted this advice.

The legal advisors confirmed that it would be sufficient to include a link to the NIS and MERC assessment on the ALAB website, and that the notices issued both to parties to the appeal and as published in the newspapers could invite the parties to the appeal and/or the public to seek hard copies from the ALAB office, if so required.

The legal advisors stated that in accordance with regulation 42(12) of the 2011 Regulations, in carrying out an Appropriate Assessment, ALAB shall take into account each of the following matters—

- (a) the Natura Impact Statement,
- (b) any other plans or projects that may, in combination with the plan or project under consideration, adversely affect the integrity of a European Site,
- (c) any supplemental information furnished in relation to any such report or statement,
- (d) if appropriate, any additional information sought by ALAB and furnished by the applicant in relation to a Natura Impact Statement,
- (e) any information or advice obtained by ALAB,
- (f) if appropriate, any written submissions or observations made to ALAB in relation to the application for consent for proposed development,
- (g) any other relevant information

The Board noted this and agreed that it would examine any submissions or observations along with the accumulated advices and information on these site.”

56. ALAB Minutes 08-10-20

- Missed redaction page 2: “The Board noted legal advice dated 15 September 2020 addressing the issue of the name of the Licence applicant”.

59. ALAB Minutes 30-11-20

- Missed redaction page 1: “The Board also noted preliminary legal advice from Tim O’Sullivan BL dated 26 November 2020. Having regard to all the foregoing the Board asked the ALAB Technical Advisor to prepare a draft AA conclusion statement to facilitate further consideration by the Board of the AA.”

60. ALAB Minutes 10-12-20

- Missed redaction page 1: “The Board noted advices from Tim O’Sullivan, BL dated 5 December 2020 in relation to the Appropriate Assessment (AA).”
- Missed redactions page 2:
“....and having regard to the advices received from Tim O’Sullivan BL, the Board agreed to focus for now on the draft AA Conclusion Statement and to defer for further consideration whether a site visit by the Board’s TA is necessary.

With reference to the AA, the Board noted its legal advice was that in concluding the AA, the Board was required to identify, in the light of the best scientific knowledge in the field, all aspects of the development project which can, by itself or in combination with other plans or projects, affect any relevant European site in the light of its conservation objectives. Second, there must be complete, precise and definitive findings and conclusions regarding the previously identified potential effects on

any relevant European site. Third, on the basis of those findings and conclusions, the Board must be able to determine that no scientific doubt remains as to the absence of the identified potential effects. Fourth and finally, where these requirements are satisfied, the Board may determine that the proposed development will not adversely affect the integrity of any relevant European site.”

ALAB Minutes 12-01-21

- Redact titles of other appeals

ALAB Minutes 05-02-21

- Redact non-relevant headings
- Missed redaction page 2: Redact “The Chairperson conveyed to the Board the legal advice she received via consultation with Tim O’Sullivan BL.”

ALAB Minutes 02-03-21

- Redact non-relevant headings/other appeal titles
- Missed redaction page 3: Sentence in the second-from-last paragraph: “It was agreed that legal advice should be sought as to whether this was a reasonable conclusion for the Board to reach in the circumstances and it was agreed to progress this.”

ALAB Minutes 01-04-21

- Missed Redaction page 3: “The Board noted request for advice issued to P.Cowhey on 15 March 2021 regarding kelp harvesting and advice dated 22 March 2021 from Tim O’Sullivan B.L. which was that the Board was required to consider the "in combination" effects of any proposed project for which an application for approval or consent has been made or which has been approved. “
- Redact headings relating to other appeals.

ALAB Minutes 29-04-21

- Missed redaction page 2: “The Board noted advice from Tim O’Sullivan B.L. dated 22 March 2021 regarding kelp harvesting which is that the Board is required to consider the "in combination" effects of any proposed project for which an application for approval or consent has been made or which has been approved. On foot of this advice the Board had instructed its TA to investigate and give due consideration to the 'in-combination' effects of the potential kelp harvesting.”
- Redact headings of other appeals.

ALAB Minutes 24-06-21

- Missed redaction page 2: “The Board further noted that legal advice had been taken on the working draft and a copy of the advice received dated 20 June 2021 was uploaded for the Board. The Chair advised the Board that ongoing legal advice was being taken.”
- Missed redaction page 12: “and further legal advice would be sought on the final draft”

As indicated above, the internal review decision is due to be issued today, 12 November 2021. Therefore, should you have any queries in relation to this email, please do not hesitate to contact us.

Kind Regards,

Lee

Lee Boorman

PHILIPLEE

Philip Lee, 7-8 Wilton Terrace, Dublin 2, Ireland

T +353 (0) 1 2373700 F +353 (0) 1 6787794 E lboorman@philiplee.ie



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From: Conroy, Antoinette [<mailto:Antoinette.Conroy@agriculture.gov.ie>]

Sent: 09 November 2021 12:26

To: Lee Boorman <lboorman@philiplee.ie>

Cc: Rachel Minch <rminch@philiplee.ie>; Imelda Reynolds <i.reynolds@beauchamps.ie>

Subject: RE: ALAB - Internal Review [PLS-worksite.FID267346] [IWOV-worksite.FID267346]

Hi Lee

Please find attached draft redacted minutes for review.

Regards

Antoinette Conroy
Secretary

An Bord Achomharc Um Cheadúnais Dobharshaothraith
Aquaculture Licences Appeals Board
Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

T +353 (0) 057 8631912
R-phost/Email: info@alab.ie
Láithreán Gréasáin/Website: www.alab.ie

From: Lee Boorman <lboorman@philiplee.ie>
Sent: Tuesday 2 November 2021 17:53
To: Conroy, Antoinette <Antoinette.Conroy@agriculture.gov.ie>
Cc: Rachel Minch <rminch@philiplee.ie>
Subject: RE: ALAB - Internal Review [PLS-worksite.FID267346] [IWOV-worksite.FID267346]

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Dear Antoinette,

By way of introduction, my name is Lee Boorman and as you know we are acting on behalf of the Board in matters relating to the decision to issue an aquaculture licence at Shot Head, Bantry Bay (the “Determination”). In connection with this, we have been advising the Board on its responses to various requests for information relating to the Determination that have been received from members of the public.

One such request was made by Mr Billy Smyth, Chairman of Galway Bay Against Salmon Cages, under the European Communities (Access to Information on the Environment) Regulations 2007 to 2018 (the “Regulations”). This request was received on 12 September 2021 and sought, among other things, access to “all minutes of ALAB board meetings at which the Shot Head, Bantry Bay salmon farm licence was discussed”. By response, the attached letter was issued to Mr Smyth on 20 September 2021, outlining the decision of Mary O’Hara and enclosing a document containing the minutes of Board Meetings where the Determination was discussed. These minutes were redacted in accordance with the provisions of the Regulations, and those redactions were explained in the decision-letter.

The Regulations create a mechanism whereby a requester who is not satisfied with a decision made under the Regulations can seek an internal review of their request. On 12 October 2021, Mr Smyth exercised this right to seek an internal review of the decision of 20 September. In Mr Smyth’s email (attached) he indicates that the minutes that he received are incomplete and deficient for the following reasons:

- i. The names of those attending each meeting have not been recorded;
- ii. There was no indication in the minutes as to whether a vote to grant the licence was recorded;
- iii. If there was a vote, the results of the vote, including how each individual Board Member voted, should be recorded.

Reg 11(2) of the Regulations states that, upon receiving a request for an internal review, the public body shall “designate a person unconnected with the original decision whose rank is the same as, or higher than, that of the original decision-maker” to undertake the review. We have discussed this matter with the Chairperson of the Board and we are in agreement that you can act as the internal review decision maker in this case, having regard to the fact that you are (i) unconnected with the original decision, and (ii) hold the same rank at the original decision maker, Mary O’Hara.

Therefore, please now find attached a draft letter acknowledging Mr Smyth’s internal review request. Subject to your views, this can be issued to Mr Smyth by email.

Secondly, a substantive response to the internal review request is due to be issued on Friday, 12 November 2021. To this end, we understand that Mary O’Hara was preparing revised versions of the Board minutes that were previously issued to Mr Smyth, which would provide the requester with the information sought. We would be grateful if you would provide us with these revised minutes so that we might review same and begin drafting a final decision for you to review.

Should you have any queries in relation to this matter, please do not hesitate to contact us.

Kind Regards,
Lee

Lee Boorman

Philip Lee, 7-8 Wilton Terrace, Dublin 2, Ireland

T +353 (0) 1 2373700 F +353 (0) 1 6787794 E lboorman@philiplee.ie



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From: Conroy, Antoinette [<mailto:Antoinette.Conroy@agriculture.gov.ie>]

Sent: 02 November 2021 17:34

To: Rachel Minch <rminch@philiplee.ie>

Cc: Lee Boorman <lboorman@philiplee.ie>

Subject: RE: ALAB - Internal Review [PLS-worksite.FID267346]

Hi Rachel

Thank you and I look forward to working with all of you also.

Kind regards

Antoinette

From: Rachel Minch <rminch@philiplee.ie>

Sent: Tuesday 2 November 2021 17:32

To: "Conroy, Antoinette" <Antoinette.Conroy@agriculture.gov.ie>

CC: Lee Boorman <lboorman@philiplee.ie>

Subject: RE: ALAB - Internal Review [PLS-worksite.FID267346]

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Hello Antoinette,

Many thanks for your email.

Lee, who has been working on these requests with me, is finalising an email to you in relation to next steps on the below AIE internal review and will send same on shortly.

We look forward to working with you and wish you all the best in your new role.

Best regards.

Rachel

Rachel Minch

PHILIPLEE

Philip Lee, 7-8 Wilton Terrace, Dublin 2, Ireland

T +353 (0) 1 2373700 F +353 (0) 1 6787794 E rminch@philiplee.ie



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From: Conroy, Antoinette <Antoinette.Conroy@agriculture.gov.ie>

Sent: Tuesday 2 November 2021 14:17

To: Rachel Minch <rminch@philiplee.ie>

Subject: ALAB - Internal Review

Hi Rachel

I have taken over as Secretary from Mary O'Hara.

She has advised me that I need to contact you in regard to an internal review regarding Billy Smyth against Salmon Cages.

Can you please advise me in this regard.

Thanks

Antoinette Conroy
Secretary

An Bord Achomharc Um Cheadúnais Dobharshaothraith
Aquaculture Licences Appeals Board
Cúirt Choill Mhinsí, Bóthar Bhaile Átha Cliath, Port Laoise, Contae Laoise, R32 DTW5
Kilminchy Court, Dublin Road, Portlaoise, County Laois, R32 DTW5

T +353 (0) 057 8631912
R-phost/Email: info@alab.ie
Láithreán Gréasáin/Website: www.alab.ie

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An Roinn Talmhaíochta, Bia agus Mara

Tá an t-eolais san ríomhphost seo, agus in aon ceanglín leis, faoi phribhléid agus faoi rún agus le h-agmaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.

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An Roinn Talmhaíochta, Bia agus Mara

Tá an t-eolais san ríomhphost seo, agus in aon ceanglái leis, faoi phribhléid agus faoi rún agus le h-agmaigh an seolaí amháin. D'fhéadfadh ábhar an seoladh seo bheith faoi phribhléid profisiúnta nó dlíthiúil. Mura tusa an seolaí a bhí beartaithe leis an ríomhphost seo a fháil, tá cosc air, nó aon chuid de, a úsáid, a chóipeál, nó a scaoileadh. Má tháinig sé chugat de bharr dearmad, téigh i dteagmháil leis an seoltóir agus scríos an t-ábhar ó do ríomhaire le do thoil.