

AQUACULTURE LICENCES APPEALS BOARD

BOARD MEETING 21.03

Virtual @ 9.30 2

March 2021

Minutes

Present: Imelda Reynolds (Chairperson), Michael Sweeney, John Evans, Micheál Ó Cinnéide
Michael Mulloy, Bill Sweeney, John Ward.

In attendance: Mary O’Hara (Board Secretary of ALAB), Ciar O’Toole (ALAB Technical Advisor)
Margaret Brennan (ALAB), Ciara Murphy (ALAB) Eoin Cussen, ECO Eireann (Agenda
Items 11 to 27)

21.03.01 Conflicts of Interest/Section 31 Declarations

All Board members confirmed that they had no conflict of interest in any of the appeals before the Board for consideration at the meeting.

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

21.03.02 Approval of draft Minutes

[REDACTED]

21.03.03 Matters arising

[REDACTED]

21.03.04 Consent Agenda

[REDACTED]

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21.03.05 AP2/1-14/2015 - Shot Head, Bantry Bay, Co Cork (Salmon)

Impact on Gannets

The Board noted the S47 Notice to MOWI issued on 15 February 2021 as circulated to and approved by the Board since the last meeting, seeking the most recent available data collected, or research carried out by MOWI or on MOWI's behalf, relating to potential or observed effects on bird species at MOWI Ireland sites for the cultivation of Atlantic Salmon; details and copies of formal protocols (if any) implemented by MOWI in respect of the collection and reporting of bird injury and mortality data at MOWI Ireland sites for the cultivation of Atlantic Salmon; details of training administered to and undertaken by MOWI staff in respect of the collection and reporting of bird injury and mortality data at such MOWI Ireland sites; details of the methods of species identification of bird injuries or mortalities at such MOWI Ireland sites; details as to whether data concerning bird injury and mortality data at such MOWI Ireland sites forms part of an external auditing procedure and if so, copies of such externally audited reports concerning the collection and reporting of bird injury and mortality data for such sites for all years available or for the past five years, whichever is the greater.

The Board noted that MOWI had replied to the Section 47 during the meeting. The Board noted the details of the response and asked that copied be circulated to Board members and the Board's technical advisor for onward referral to MERC.

The Board noted the information provided by the ALAB Technical Advisor pertaining to the BioAtlantis Licence Application for Mechanical Kelp Harvest in Bantry Bay and the implications of this, if any relating to the Shot Head appeals, as follows:

- no EIA screening or further investigations were carried out when the original licence application was submitted in 2009. This type of project is not defined in the legislation requiring the completion of an EIA;
- no consideration has been given in relation to the potential impacts on Special Conservation Interests (bird species) from nearby Special Protected Areas due to the mechanical harvesting of kelp in Bantry Bay. If implemented, pending further consideration, the project could potentially impact on bird species from nearby SPAs which use Bantry Bay;
- A baseline study was carried out by MERC Consultants in 2016, looking at one test site and one control site in each of the five areas in Bantry Bay where the licence application would apply. This recorded the existing flora, fauna and habitat in all sites and recorded no rare or unusual habitats or species and appears to be of a reasonable quality. This is the only environmental monitoring relating to this project that could be found by the ALAB Technical Advisor;
- BioAtlantis provided a monitoring programme plan for five years post harvest, based on sites selected by Merc in the baseline study to monitor potential impact of harvesting. This postharvest monitoring was to be included as a licence condition. It appears to be a reasonable monitoring plan, looking at flora, fauna and habitat effects.

In-Combination effect of kelp harvesting

The Board note that following assessment of this matter, the position at present appears to be that no kelp harvesting is actually taking place as yet in Bantry Bay. The An Taisce response to the NIS/AA Report notes there is "at least one appeal pending and one licence granted". Enquiries by the Board reveal the following:

1. BioAtlantis Limited applied for a foreshore licence in June, 2009 and were granted a 10 year licence for the period commencing 1 January 2014, in March 2014, under reference no. Number: FS006061 for the mechanical harvesting of kelp at 5 locations in outer Bantry Bay comprising 753 Hectares.

2. In June 2018 BioAtlantis notified the Department of Housing, Planning and Local Government, in accordance with the conditions of the Foreshore Licence, of its intention to commence mechanical harvesting of kelp within the foreshore limited , commencing on approximately 4 July 2018.
3. This foreshore licence was the subject of a judgment in the High Court by Ms. Justice Murphy, delivered on the 20th day of May, 2020, on the judicial review application of John Casey (Applicant). The other parties were The Minister For Housing, Planning And Local Government, The Minister For State At The Department of Housing, Planning And Local Government, Ireland, and The Attorney General. Bioatlantis Aquamarine Limited was a Notice Party. The net effect of the decision is that the licencing process in relation to the BioAtlantis licence application had not yet concluded by reason of the failure by the Minister to comply with section 21A and section 21B of the Foreshore Act. Therefore the court had no jurisdiction to determine the particular dispute which has arisen between the parties. In order to complete the process as required under the Foreshore Act 1933 (as amended) the Minister's determination must be published in Iris Oifigiúil. This is required pursuant to Section 21A of the 1933 Act so that the public are informed of the right to question the validity of the determination, as provided for in section 21B of the Act. Until those provisions are complied with, the licencing process is incomplete.
4. ALAB understands an appeal against this decision was lodged on 6 August 2020 and that no hearing date has yet been assigned for it.
5. ALAB has also established that there are separate proceedings entitled "Casey v Bioatlantis 2018/257 MCA" . In these proceedings an appeal was lodged on 20 July 2019. This case has a hearing date of 21 June 2021. It is not known whether this case concerns the Foreshore Licence application .
6. ALAB has checked the website the Department of Housing Local Government & Heritage and cannot find any other foreshore licence applications for mechanical kelp harvesting in Bantry Bay.

Having considered the foregoing, the Board noted the uncertainty over the legal status of the licence; the fact that the judicial review decision in Case 2018/186 JR is under appeal; and that the licence term granted was 10 years from 1 January 2014. In all these circumstances the Board considered it might not be necessary for it to consider the "in combination" and "cumulative" effects of any potential mechanical kelp harvesting on the basis it is unlikely to commence on foot of the licence which may or may not have been granted. The Board also noted that when BioAtlantis submitted the Licence Application for Mechanical Kelp Harvest in Bantry Bay, a Trial Licence was applied for, but a full licence was granted. 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.

Non-SPA species

The Board noted it had issued the Marine Institute with a section 47 Notice dated 27 February 2018 in which the MI was asked to consider whether, given the EIA does not consider important non-SPA bird populations which have the potential to interact with the proposed aquaculture activity, the potential impacts on those important non-SPA bird populations. The MI response was dated 28 March, 2018 and this was again reviewed by the Board. The MI Conclusions were that significant

impacts on bird were considered unlikely; displacement was unlikely to have significant effects; and mortalities as a result of entanglements are not likely to be frequent and adverse impacts on bird populations are therefore not likely . On that basis the MI concluded that the requirements to carry out a full assessment of the importance of the area for other bird populations is not warranted.

The Board considered this response carefully and having done so, determined that it agreed with the MI assessment in relation to non-SPA species and that it would adopt same.

21.03.06 AP1/1-2/2017 Braade Strand, Gweedore Bay, Co Donegal

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21.03.07 AP26-31&33/2019 Dungloe Bay, Donegal

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21.03.08 AP2&3/2019 Trawbreaga Bay

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21.03.09 AP57-69/2019 & 1,2,19 & 20/20 Trawbreaga

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21.03.10 AP23/2020 Aughinish

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21.03.11 AP13-44/2018 and AP 52&53/2019 Castlemaine Harbour

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21.03.12 AP31/2018 Castlemaine Harbour (T6/373) Patrick Ashe

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21.03.13 AP32/2018 Castlemaine Harbour (T6/375) William Casey

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21.03.14 AP33/2018 Castlemaine Harbour (T6/378 & 391) John Cronin O'Reilly

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21.03.15 AP34/2018 Castlemaine Harbour (T6/398) Michael Scannell

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21.03.16 AP35/2018 Castlemaine Harbour (T6/401) John and Martin Riordan

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21.03.17 AP36/2018 Castlemaine Harbour (T6/405) John J Reilly

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21.03.18 AP37/2018 Castlemaine Harbour (T6/433) Liam Hayes

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21.03.19 AP38/2018 Castlemaine Harbour (T6/439) Gerard Casey

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21.03.20 AP39/2018 Castlemaine Harbour (T6/446) Liam Hayes (to be determined by 31 March 2021)

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21.03.21 AP40/2018 Castlemaine Harbour (T6/454) Michael O'Connor

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21.03.22 AP41/2018 Castlemaine Harbour (T6/458) Gerald McCarthy

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21.03.23 AP42/2018 Castlemaine Harbour (T6/465) John J Reilly

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21.03.24 AP43/2018 Castlemaine Harbour (T6/392) Gerard O'Reilly

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21.03.27 AP53/2019 Castlemaine (T06/494A) Gerard Casey

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21.03.28 Financial Matters

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21.03.29 AOB

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21.03.30 Dates of Next Meetings:

[REDACTED]

Meeting concluded at 1.30 pm

Dated the 29th day of April 2021

Imelda Reynolds

Imelda Reynolds CHAIRPERSON