

AQUACULTURE LICENCES APPEALS BOARD

BOARD MEETING 21.08

Virtual @ 8.30

24 June 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)

21.08.01 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 other than John Ward who had previously mentioned his conflict in relation to Loughros Mor appeals (Agenda Item 7). The Secretary confirmed Mr Ward did not receive any information or meeting papers concerning this appeal.

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.

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21.08.05 AP2/1-14/2015 - Shot Head, Bantry Bay, Co Cork

The Board noted that since its previous meeting further working drafts of this determination had been circulated to the Board for its comment and review. 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. A further updated draft was circulated to the Board for review at the meeting. The Board also noted the reports prepared by Dr Ciar O'Toole relating to the In-Combination effects for Kelp; the Site Visit Report for Dr O'Toole's visit to the Dromagoulane/Trafrask River Catchment; and the final draft of the AA Conclusion Statement for Board approval, taking into account the matters discussed by the Board at its meeting on 28 May 2021. The Board also noted the outcome of the Marine Institute Appropriate Assessment Screening of Aquaculture Activities in Outer Bantry Bay and in particular the June 2018 and September 2020 Screening Reports produced and accepted the MI Finding of no Significant Impacts for the two relevant SAC sites - Glengarriff Harbour and Woodland SAC and Sheep's Head SAC. The Board confirmed that the proposed activity at the Site has no potential for significant effects and it is not likely to have a significant effect on either of the SACs either individually or in combination with other sites, plans or projects.

The Board proceed to review and approve each element of the draft determination, and in doing so specifically noted and confirmed as follows:

1. The proposed fish farm is not within a designated conservation area and will have no impact on adjacent Natura 2000 sites and their qualifying interests or conservation objectives as outlined above. Notwithstanding, the Board determined that the licence for the Site should include, an additional condition requiring the Applicant to comply with any code of practice or monitoring programme developed in agreement with NPWS or any other relevant State body for the purposes of monitoring and recording bird populations in Bantry Bay;
2. On the basis of modern modelling techniques, the site is hydrologically isolated from adjacent main rivers and other fish farms and will therefore present an overall low sea lice infestation and pollution risk, as presented in the 2011 EIS, Supplemental EIS and

Technical Advisor Final Report. In this context, the Board considered potential threats from sea lice both to the Site and to wild salmonid populations in Bantry Bay, including migratory salmonids within its catchment. The Board noted that the impacts and risks associated with sea lice were assessed in the 2011 EIS and in the EIA. The impacts and risks were subsequently assessed further during the Oral Hearing, in the Supplemental EIS, in submissions to the Board from MI and IFI, in the Technical Advisor Final Report and as discussed above. Further the Board had regard to the DAFM Monitoring Protocol No.3 for Offshore Finfish Farms - Sea Lice Monitoring and Control, with which the Applicant is required to comply with as a standard Term and Condition of the licence and determined that this, along with the Pest Management Plan, is deemed to be sufficient and reduces any risk to a reasonable, non-significant level. Notwithstanding, the Board determined that the licence for the Site should include an additional condition requiring the Applicant to comply with any bay wide single bay management plan or code of practise for Bantry Bay developed in agreement with any relevant State body;

3. The risk of fish escapes from the proposed salmon farm at the Site was discussed in the 2011 EIS and was considered also at the Oral Hearing and in the Technical Advisor Final Report and the advice of the Board's Technical Advisor in the Technical Advisor Final Report was that the proposed activity at the Site presents a negligible risk for the transfer of fish diseases to wild stocks via escapes into Bantry Bay. The Board noted that certain Appellants had raised concerns over large episodic events associated with holes in nets caused by predators, or as a result of storm events. The Board noted the specifications of the farm cages and their ability to withstand the expected conditions were not supplied but also noted that approval of the cages specification will fall within the jurisdiction of and require approval from DAFM. The Board also noted that a Term and Condition of the licence will include compliance with the most up to date guidelines on fish containment developed by the North Atlantic Salmon Farming Industry and the NASCO Liaison Group (copies of which were circulated to the Board for noting at the meeting). Notwithstanding, the Board determined that the licence for the Site should include an additional condition requiring the Applicant to comply with the standards laid out in the Structural Design Protocol, as revised from time to time;
4. The location of the Site is exposed to prevailing winds with a possible considerable fetch. Since the suitability of the cage structures and system will be subject to scrutiny and approval by DAFM, as outlined above, the Board consider this can be managed by DAFM approval and adherence by the Applicant to the standards set out in the Structural Design Protocol, as revised from time to time;

5. While MI advice to the Board initially suggested that a potentially commercially harvestable population of Nephrops may be present within the Site, further clarification from MI stated that *“disruption would appear limited and pot fishing could otherwise continue in very close proximity to the proposed salmon farm.”*

Deposition from the proposed fish farm at the Site is likely to have a significant adverse impact on part of this potentially exploitable prawn (*Nephrops*) ground directly beneath the cages themselves. However, the overlap with commercial pot fishing is deemed minimal and current and future pot fishing could continue outside the footprint of the mooring grid, in close proximity to the Site. The Board determined that the presence of *N. norvegicus* within the Site shall have a non-significant impact on commercial fisheries in Bantry Bay;

6. That the local water current conditions could potentially lead to retention and slow dispersal of pesticide treatment Emamectin Benzoate, potentially causing a breach of the Environmental Quality Standards (“EQS”) but the Board has determined that the licence for the Site should include the following additional conditions:

- a. The Applicant shall not use Emamectin Benzoate after the expiry of month seven of the growing cycle.
- b. Well boat discharges shall be within the Site.
- c. Concentrations of Emamectin Benzoate, Deltamethrin, or other such product as may be authorised for use, will remain within EQS limits;

7. That Schedule 4 of the licence proposed to be granted by the Minister permitted biennial production of 3,500 tonnes of farmed salmon. The production cycle was 24 months, with harvesting over 6 months between months 17 and 22 inclusive, and the final 2 months being a fallowing period prior to re-stocking. As part of its appeal, the Applicant requested that the licence condition specifying production limits be changed from a biennial production limit by harvested weight to a Maximum Allowable Biomass (“MAB”), limiting the biomass of live fish on the Site at any given time. This was considered in some depth at the Oral Hearing and in the Technical Advisor Final Report. Having considered the matter the Board agreed with submissions from the Applicant provided as part of their appeal that MAB is recognised internationally as an appropriate metric for assessing loading at finfish production sites and that it facilitates effective regulation and management of sites. The Board therefore determined that the Site should operate on a MAB of 2,800 tonnes over a production cycle of 24 months, with no restriction on the timing of harvesting of stock, and the final 2 months being a fallowing period prior to re-stocking and that Schedule 4 of the licence be amended by removing the specified details concerning Production and substituting the following: “Production”

The production limit shall be based on a maximum allowable biomass of 2,800 tonnes over a production cycle of 24 months, with no restriction on the timing of harvesting of stock, and the final 2 months being a fallowing period prior to re-stocking.";

8. That the Applicant had, as part of its appeal, requested a removal of the licence condition that specified the dimensions and spatial arrangement of the fish pens and feeding barge (while remaining within the boundaries of the Site) to allow for upgrades or improvements in pen and mooring technology and to accommodate the application of changes in best practice. The Board determined that this ground of appeal should be acceded to and specifically, that the licence be granted on the basis of an increase in the number of cages from 14 to 18 to facilitate current best practice, as this configuration would still be contained within the Site and will enhance disease management and fish welfare provisions. It was also noted that the licence will include a condition that the Applicant will adhere to the standards set out in the Structural Design Protocol and this plan will be approved by DAFM. The Board also noted that a Term and Condition of the licence includes compliance with the most up to date guidelines on fish containment developed by the North Atlantic Salmon Farming Industry and the NASCO Liaison Group. The Board agreed that Schedule 4 of the licence proposed to be granted by the Minister be amended by removing from Schedule 4 the specified details concerning Floating Facilities and the substitution for same with the following:

"Floating Facilities"

It is proposed to deploy 18 No. circular cages in the licensed site area. the proposed layout and position of pens may be varied provided that the pen volumes do not exceed the space required to accommodate the MAB to a peak biomass of 10 kg/m³ in any pen and provided that the pen, grid and mooring configuration is certified by way of written confirmation by a Chartered Engineer which will be submitted to, and approved by DAFM. All associated moorings and anchors are to be located within the boundaries of the licensed site area.

It is proposed to deploy a single feed barge on the cage mooring grid within the licensed site area. All associated moorings and anchors are to be located within the boundaries of the licensed site area.

No other floating structures may be moored for extended periods at the site overall licenced site area.

The Licensee will adhere to the standards set out in the DAFM Protocol for Structural Design of Marine Finfish Farms, 2016 and the Floating Facilities shall be approved by DAFM."

It was also determined that the Applicant shall obtain the prior approval of the Minister to the Initial layout of the cages on the Site and such plan shall be included in Schedule 2 to the Licence;

9. As part of its appeal the Applicant requested a withdrawal of the licence requirement to undertake further works for the protection of underwater archaeology. The Board noted that the Minister's File included an archaeological impact assessment, including a full side-scan and magnetometer survey of the licence area dated June 2012. The Board noted that this assessment, while acknowledging the potential for some of the sediment types to retain archaeological material but observing that local hydrological conditions serve to reduce the survivability of such artefacts, indicated that no evidence for the Site being of archaeological significance was found. It also noted that the assessment had indicated that the deployment of anchors may disturb and uncover buried items and recommended that a further side-scan survey be undertaken subsequent to anchor deployment. The Board was of the view that the assessment was adequate and that a further acoustic survey is unnecessary. The Board further determined that there be a rapid visual inspection of the anchors post deployment and any unearthed objects of human origin be reported. Accordingly the Board determined that the licence be amended by deleting from Schedule 5 the additional condition requiring the Applicant to engage the services of a suitably qualified Archaeologist, with underwater/maritime experience to monitor all seabed disturbance works, including anchor installation, associated with the development and substituting therefore in Schedule 5 to the Licence a requirement for the Applicant to undertake a visual inspection of the anchors as soon as is practicable following their deployment and to report any unearthed objects of human origin to the Underwater Archaeology Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media;
10. That the Technical Advisor Final Report found that, throughout the current licensing process, both the Applicant and DAFM have complied with all of the statutory requirements as set out in S.I. No. 236/1998 - *Aquaculture (Licence Application) Regulations, 1998 in respect of public notices, public consultation and universal access to relevant information*. The Board accepted this conclusion;
11. That the Technical Advisor Final Report concluded that the carrying capacity of Bantry Bay in terms of effects on wild salmonids, the dispersion and breakdown of chemical, nutrient and biological farm discharges and the removal of enriching nutrients from Bantry Bay is not expected to be exceeded by the addition of the proposed activity at the site, with the exception of Emamectin Benzoate. The Board assessed and accepted this conclusion and is satisfied that any concern can be managed by the inclusion of the licence condition previously approved;

12. That it accepted the finding of the Technical Advisor Final Report which stated that the noise generated from the operation of the proposed fish farm will present no risk, either direct or indirect, to birds or marine mammals and that sound levels will be sufficiently attenuated by distance to below that which could be considered to constitute a nuisance to nearby human habitation;
13. That while a number of appeals expressed dissatisfaction with the adequacy of the 2011 EIS and the EIA, Part 4 of the draft Determination outlined the steps taken by the Board to ensure a complete Environmental Impact Assessment process was followed. The Board is satisfied that the 2011 EIS, the EIA, the Supplemental EIS, the Technical Advisor Final Report, the Freshwater Pearl Mussel Report, the Bird Impact Assessment Report and all the material provided to the Board in response to Notices issued, as detailed above, taken together identify, describe and assess in an appropriate manner, in the light of the appeals before it, the direct and indirect effects of the proposed activity at the Site on the following factors:
 - human beings,
 - fauna and flora;
 - soil, water, air, climate and the landscape;
 - material assets and the cultural heritage; and □ the interaction between the above factors and that the proposed aquaculture activity at the Site will not have significant effects on the environment, including the factors listed above by virtue of, inter alia, its nature, size or location;
14. That an Appellant raised concerns regarding the potential impact of the Bantry Bay licence on the global protection of wild salmonid stocks. The Board considered the impact on local wild salmonid populations whose adults return to rivers in Bantry Bay and determined the proposed development at this Site would not have any significant negative effect. This same determination applies to potential global effects on wild salmonid populations also;

The Applicant requested that the licensee name be amended to reflect a corporate restructuring which has precipitated a re-branding of the Applicant. The Board had regard to this and determined that the assignment of any licence is a matter for the Applicant to address in line with the licence provisions.

An appellant raised concerns regarding the absence of a local aquaculture management scheme. The Board noted that local aquaculture management schemes such as Co-ordinated Local Aquaculture Management Systems ("CLAMS") remain voluntary. The Board further noted that CLAMS has to date been explicitly removed from the licensing

and regulatory process and is not intended for use in the consideration of individual site licences.

15. That a number of appeals expressed dissatisfaction with the licence approval process, with a common theme being a suggestion of a lack of impartiality amongst government/ministerial advisors, government agency staff or Board members, including assertions of conflicts of interest. The Board considered this in terms of government/ministerial advisors and government agency staff and determined this is not a matter that needs to be considered by the Board, where it determines the application for the licence as if the application had been made to the Board in the first instance. In relation to assertions of conflict of interest within the Board, the Board had given very careful consideration to these assertions, and having done so, was satisfied that no conflicts of interest arise in respect of the position of any of the Board in connection with the appeals. The Board also noted that details of the determination of the Board were communicated in writing to the relevant Appellants in April 2016;
16. That an Appellant raised concerns regarding the contribution of the fish farming industry to climate change. The Board had regard to this and determined that that this issue specifies the fish farming industry as a whole and was not specific to the licence under appeal. As regards this particular fish farm, the Board has considered the potential impacts it would have on climate change and has deemed them to be nonsignificant;
17. That an Appellant raised concerns regarding the Applicant's record of supposed inadequate compliance, enforcement and monitoring. The Board considered this and determined the Applicant's corporate compliance history and competence for operating within Ireland is a matter for direct consideration by DAFM as part of the oversight of any licence;
18. That a number of Appellants raised matters to which the Board had regard and having done so the Board determined that those issues fell outside the matters for consideration in this appeal, being the following:
 1. Disapproval with government policy on aquaculture;
 2. Concerns regarding the apparent impact of farmed fish on human health;
 3. Recent Irish Government policy statements and associated publications, such as *Food Harvest 2020* and *Harnessing Our Ocean Wealth - An Integrated Marine Plan for Ireland*, which promote the expansion of the aquaculture industry in Ireland, arguing that these represent changes in policy which under EU

Directive 2001/42/EC require an SEA to be undertaken before any further aquaculture licences can be granted;

4. An alleged lack of regulation of the salmon farming industry nationally;
5. Concerns regarding the sustainability of the salmon farming industry, including the preparation of farm feed.

In summary, in reaching its determination on the Appeals, the Board had regard to the documents listed in Part 2 of the draft determination; the grounds for appeals as detailed in Part 3, the Board's Environmental Impact Assessment as detailed in Part 4, and the Board's Appropriate Assessment as detailed in Part 5, and the matters set out as at section 61 of the Act as detailed in Part 6 of the draft determination. The Board was satisfied it had had access to the best available scientific advice and this allowed the Board to make its decision being confident that the standard of no reasonable scientific doubt has been reached regarding all ecological and environmental queries concerning Natura 2000 sites (SACs and SPAs) and that a sufficient standard of information was provided for all other queries, allowing them to make informed decisions as required. All queries from the Board itself, its technical advisors, appellants, and public consultation have been answered to the Board's satisfaction. The Board was satisfied that it had access to all relevant up to date evidence available while carrying out the appeals process and its conclusions at various stages of the appeals process remained valid and up to date.

The Board also confirmed it was satisfied with the outcome of the EIA and AA processes as outlined in Parts 4 and 5 of the draft determination and all queries from the Board itself, its technical advisors, appellants, and public consultation have been answered to the Board's satisfaction. The Board was also satisfied that the standard of establishing no reasonable scientific doubt has been reached regarding all ecological and environmental queries concerning Natura 2000 sites (SACs and SPAs).

The board noted that in general, it had agreed with and adopted the reports of its technical advisors referred to in paragraph 7.2. of the draft determination but in some limited instances the Board's opinion differed from those reports and these instances and their resolutions are outlined as follows:

- A. The 2011 EIS submitted by the Applicant was considered inadequate in parts by the Board. Part 4 of the Determination dealt with this and the subsequent reports requested, along with consideration by the Board before their acceptance of the Environmental Impact Assessment process as complete and adequate and that the proposed aquaculture activity will not have significant effects on the environment, by virtue of, inter alia, its nature, size or location.

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- B. The conclusion of the Technical Advisor Interim Report that AA screening was not required for any connected Natura sites was not accepted by the Board and further work was carried out following the Recommendations of the Oral Hearing Report, as outlined in Part 5 of the draft Determination. Further AA Screening was carried out on connected SPA sites, with the details given in Part 5 of the draft determination and relevant reports.
- C. The Bird Impact Assessment Report raised issues regarding bird species in Bantry Bay, both those that were SCI species for connected SPAs and those species that were not. A response from MI regarding bird species was accepted by the Board in relation to its assessment of potential effects on bird species in Bantry Bay other than those considered in the Appropriate Assessment more particularly detailed in Part 5 of the draft Determination. The Board did not find that MI conclusions regarding SCI species from connected SPA sites was sufficiently robust compared to the evidence put forward by the Bird Impact Assessment Report and recommended the matter go to Appropriate Assessment screening, resulting in the issuing of the AA Screening Report. Following the completion of the Appropriate Assessment process, the Board determined that the proposed fish farm development at the Site will not impact adversely on SCI species or conservation objectives for the connected SPA sites concerned and as such, will not adversely affect the integrity of the connected SPA sites concerned either individually or in combination with other plans or projects.
- D. The Board accepted the outcome of the MI AA Screening Matrix for Outer Bantry Bay 2018, as referred to in the AA Report in relation to connected SACs only (and similarly for the updated 2020 version of the Screening Matrix). These findings in relation to the SACs considered corresponded with the Seal Screening Report and Otter Screening Reports which had been considered and accepted by the Board. The AA Report did not find that the MI conclusions relating to potentially connected SPAs were sufficient given the development of this new project and the outcome of the AA Screening Report which recommended a Stage 2 Appropriate Assessment process be carried out for three SCI species. The Board considered and accepted these conclusions.

The Board noted that the EIA and AA processes, once completed, did not indicate any basis not to allow the proposed fish farm on the Site. The Board had considered all the grounds for appeal and noted and confirmed the reasons given for all appeal decisions as set out in Part 6 of the draft determination. The Board confirmed it had considered each appeal issue individually and also had regard to section 61 of the Act, as outlined at Part 6 of the draft determination, when making their decision.

The Board therefore confirmed its determination to conclude the appeal pursuant to section 40(4)(b) of the Act, by determining the application for the licence as if the application had been made to the Board in the first instance and **TO GRANT** a licence to the Applicant for the proposed activity on the Site in accordance with the draft licence prepared by the Minister, but subject to the varied and amended Terms and Conditions as set out in the draft Determination.

The Board agreed that the draft determination would be tidied up to take account of the feedback of board members at this meeting and further legal advice would be sought on the final draft, which would be again circulated to the Board members for final approval prior to issue, noting that the determinations and notifications would have to issue prior to 30 June 2021. It was also noted that the website would be updated to list the documents referred to in the determination. A notice is to be prepared for posting on the Latest News page.

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Dated the 22 day of July 2021

Imelda Reynolds

Imelda Reynolds CHAIRPERSON

