

An Bord Achomharc Um Cheadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board



Mowi Ireland,  
Kindrum,  
Fanad  
Letterkenny,  
Co. Donegal

16 December 2019

Our Ref: AP1/2019  
Site Ref: T5/233

**Re: Appeal against the notice of Ministerial decision of the Minister for Agriculture, Food and the Marine under the Provisions of Section 68(1) and Section 19(a)4 of the Fisheries (Amendment) Act 1997, in respect of entitlement to continue Aquaculture Operations under the provisions of S19(a)4 of the Act for the Culture of Salmon in cages at a site east of Deenish Island, Ballinskelligs Bay, Co Kerry, T06/202 held by Silver King Seafoods Ltd, a wholly owned company of Comhlucht Iascaireachta Fanad Teoranta (MOWI Ireland), Fanad Fisheries, Kindrum, Fanad, Letterkenny Co Donegal**

Dear Sirs,

I refer to your notice of appeal, received on the 9th May 2019, of the Minister's determination notified to you by letter dated 12th April 2019 (ALAB Reference AP1/2019). I note that your notice of appeal includes a preliminary objection that the Minister does not have the power to make the determination the subject of your appeal. Your notice of appeal also states that you will be taking judicial review proceedings challenging the Minister's determination the subject of your appeal and seeking an order staying your appeal pending the resolution of the judicial review proceedings.

You commenced judicial review proceedings (Record No. 2019/292JR) on the 20th May 2019. In your proceedings you challenge the Minister's power to make the determination the subject of your appeal. You also sought ex parte and obtained a stay (by Order dated 20th May 2019) on ALAB's consideration and determination of your appeal of the Minister's determination. You sought the stay on the basis that ALAB is not entitled to determine your appeal as it has no power to determine an appeal from the Minister's determination as it was not an appeal of a decision of the Minister on an application for an aquaculture licence or the revocation or amendment of an aquaculture licence, as required by section 40 of the Fisheries (Amendment) Act 1997 as amended (the "1997 Act").

However, the Minister's Statement of Opposition (filed 18th October 2019) in your proceedings claims, in respect of your challenge to Minister's determination the subject of your appeal, inter alia that the Minister is empowered to revoke a licence where satisfied that there has been a breach of any condition specified in the licence and that the appropriate remedy that is available to you is the prosecution of your appeal. Having received that Statement of Opposition you had the stay lifted on Monday 2nd December 2019 and your proceedings adjourned generally (with liberty to re-enter).

In those circumstances, ALAB requests, pursuant to section 46 of the 1997 Act, within 30 days beginning on the date of service of this notice that you submit whether you now maintain, and if so on what basis, that the Board is entitled to consider and determine your appeal and, in particular, whether you now maintain that your appeal is an appeal of the Minister's revocation (within the meaning of section 40 of the 1997 Act) of your aquaculture licence (T06/202) notified to you by letter dated 12th April 2019; and, whether you are maintaining your preliminary objection that the Minister does not have the power to make the determination the subject of your appeal.

If your submission is not received before the expiration of the specified period, the Board will, after the expiration of that period and without further notice to you, pursuant to section 48 of the 1997 Act, determine your appeal. In those circumstances, your appeal will be determined on the basis of your notice of appeal that is currently before ALAB, including your preliminary objection that the Minister does not have the power to make the determination the subject of your appeal.

Yours sincerely



Mary O'Hara  
Secretary to the Board