

An Bord Achomharc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board



Mr Charlie McConalogue TD
Minister for Agriculture, Food and the Marine
Agriculture House
Kildare Street
Dublin 2

29 June 2023

Our Ref: AP36/2019
Site Ref: T03/048A

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to grant with variations an Aquaculture Licence to Noel and Sheila Scallan for the bottom cultivation of mussels on the foreshore on site ref T03/048A in Wexford Harbour, Co Wexford

Dear Minister,

We refer to the above appeal of the decision to grant, with variations, an aquaculture licence for the bottom cultivation of mussels in Wexford Harbour.

Pursuant to section 35 of the Fisheries (Amendment) Act 1997 as amended, KRC Ecological Ltd was commissioned by ALAB to complete a report for the purposes of ALAB's Appropriate Assessment (AA) in respect of appeal refs: AP34-48/2019, including the above appeal, and the potential effects of mussel aquaculture on potentially impacted Special Protected Areas (SPAs) (the KRC Report).

The KRC Report includes an assessment of the available waterbird data for Wexford Harbour and Slobbs and concludes that the significant data gaps and uncertainties are such that it is not possible to assess the potential impacts of the proposed aquaculture activities, the subject of the licence applications, and to complete an AA in accordance with the requirements of the Habitats Directive 92/43/EEC at this time. The KRC Report is available on ALAB's website at the following link:

<https://alab.ie/appeals-open/wexford/> (Schedule of Documents)

The KRC Report also refers to the 2016 AA prepared by Atkins for the Marine Institute in respect of various SPAs (the Atkins Report).

The Atkins report concluded that (a) the available evidence indicated a high likelihood of significant impacts on certain species and (b) there were other potential impacts where the available evidence was not sufficient to rule out significant impacts beyond a reasonable scientific doubt. It identified management measures, research and information compilation which would be required to complete the assessment.

The Atkins Report is available on ALAB's website at the following link:

<https://alab.ie/appeals-open/wexford/> (Schedule of Documents)

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The additional work and information identified in the Atkins Report as required for the purposes of completing an AA is not referred to in the AA Conclusion Statement prepared by the Department of Agriculture, Food and the Marine.

The KRC Report also notes that most if not all of the recommendations in the Atkins Report appear not to have been implemented and makes a series of recommendations on the further information and analysis required to complete an AA. In summary, these set out the need for:

- a) A revised AA based on much more recent data to assess in situ and ex situ impacts.
- b) An initial review of the recommendations arising from the Atkins Report.
- c) An independent programme of work commissioned to undertake desk, field, and analytical work with expert prescriptive input.
- d) New field studies to take place over a period of a minimum of two, ideally three years.
- e) Production of a site-based Total Allowable Catch (TAC) model which would utilise the data collected over the field study period.

ALAB notes the deficiencies existing in scientific data for Wexford Harbour and that a timeframe of up to four years is needed to collect and analyse the data required to properly assess the impact of the proposed activities which are the subject of the licence applications on the SPAs, including the potential for cumulative impacts, before an AA can be completed.

In addition, significant resources and the involvement of government bodies, such as the NPWS and experts in the design and implementation of the work programme would appear necessary given the nature and extent of the programme of work needed to address these deficiencies.

In view of these timelines and the nature and extent of the work required, it appears to ALAB that it would not be possible to address the deficiencies in the scientific data in the context of the appeals and that it would be premature to consider the grant of a licence at this time.

However, before making a final decision in this respect, the Board is of the opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the matters referred to in this letter and the KRC Report.

Section 46(1)(a) of the 1997 Act provides that

"Where the Board is of the opinion that, in the particular circumstances of an appeal, it is appropriate in the interests of justice to request a party or other person who has made submissions or observations to the Board in relation to the appeal to make submissions or observations in relation to any matter which has arisen in relation to the appeal, it may, in its discretion, notwithstanding section 41(3), 44(4), 45(4) or 50(4), serve on the party or person a notice—

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(a) requesting the party or person, within a period specified in the notice (being not less than 30 days beginning on the date of service of the notice) to submit to the Board submissions or observations in relation to the matter,"

Therefore, in accordance with the provisions of section 46(1)(a) of the 1997 Act, ALAB HEREBY REQUESTS you to make any submissions or observations you have in relation to the matters referred to in this letter and the KRC Report.

Such submissions or observations must be received by ALAB not later than Friday 29 September 2023.

If the submissions or observations are not received before the expiration of the period specified above ALAB will, without further reference to you, determine the appeal. This notice is being copied to all parties to the Appeal.

Please note that ALAB has not yet made a decision on whether to hold an oral hearing of the appeal.

Finally, hard copies of the KRC Report and the Atkins Report are available on request by contacting me in writing, by email or by phone - The Secretary, Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co Laois. R32 DTW5, Email: info@alab.ie. Phone: (057)8631912

Yours sincerely,

Margaret Carton
Secretary to the Board