

An Bord Achomhairc Um Cheadúnais Dobharshaothraithe Aquaculture Licences Appeals Board



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

31 January 2024

Our Refs: AP36/2019 (S46 01.2024)
Site Refs: T03/48A

Appeal against the decision of the Minister for Agriculture, Food and the Marine in relation to an Aquaculture Licence to Noel and Sheila Scallan for the bottom cultivation of mussels on the foreshore on site ref T03/48A at Wexford Harbour.

Dear Minister

We refer to the above appeal and to your submission dated 21 September 2023 in response to ALAB's Section 46 request dated 29 June 2023.

ALAB also received the following submissions in response to similar Section 46 requests which issued in respect of Appeal Refs 34-48 /2019:

1. Submissions of the Marine Institute, both dated 19 September 2023 (received 20 September 2023 - 2x no.)
2. Submission of Wexford Mussels Ltd dated 25 September 2023.
3. Submission of the NPWS dated 26 September 2023.
4. Submission of An Taisce dated 29 September 2023.
5. Submissions by William Fry LLP on behalf of Crescent Seafoods Limited, Fjord Fresh Mussels Limited, Loch Garman Harbour Mussels Limited, Riverbank Mussels Limited, TL Mussels Limited and WD Shellfish Limited dated 29 September 2023.

The second submission of the Marine Institute is a response to Section 46 Requests dated 23 August 2023 to the Marine Institute and to the NPWS in relation to the Slaney River Valley and Raven Point Nature Reserve Special Area of Conservation (SAC).

KRC Ecological Ltd has reviewed the submissions received in all appeals and prepared a supplemental report dated 5 December 2023 (the Supplemental KRC Report).

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This concludes *inter alia* that, notwithstanding some of the points made in particular by the Marine Institute, the over-arching conclusions in the KRC report of June 2023 stand with respect to data inadequacies and the inability, based on the available evidence, to rule out the potential for significant impacts of the activities on Special Protected Areas (SPAs) beyond a reasonable scientific doubt in accordance with the requirements of the Habitats Directive 92/43/EEC.

ALAB has considered the submissions received and the Supplemental KRC Report.

It appears to be generally accepted that further survey work is required. However, no indication is given in any of the submissions that this work is being undertaken or is planned.

For the avoidance of doubt, ALAB considers that it is beyond its remit and functions to design, coordinate or implement the work programme identified in the KRC Report. It also would not be feasible to expect licence applicants to do so by way of information requests under Section 47 of the 1997 Act or Regulation 42 of the European Communities (Bird and Natural Habitats) Regulations 2011. In any event, postponing the determination of these appeals for a lengthy and potentially indefinite period would be contrary to:

1. ALAB's statutory objective to ensure that appeals are determined expeditiously.
2. The objectives of the Habitats Directive, particularly in respect of the renewal applications where the activities are continuing to operate further to Section 19A of the 1997 Act, given the uncertainties identified as regards the potential for significant impacts on SPAs.

The Board has therefore provisionally formed the view that the Licence Applications the subject of the above appeals should be refused as it would not be possible or appropriate to seek to address the deficiencies in the scientific data in the context of these appeals.

However, before proceeding to make its final determination, the Board is of the opinion that, in the particular circumstances of these appeals, it is appropriate in the interests of justice to HEREBY REQUEST you further to Section 46(1)(a) of the 1997 Act to make submissions or observations in relation to the matters referred to in this letter, the submissions listed at 1 to 5 above and the Supplemental KRC Report.

The submissions and the Supplemental KRC Report are available on ALAB's website, which can be accessed at www.alab.ie, or by following the links set out in the schedule to this letter.

Should you have any difficulties accessing the website or the scheduled links, please contact me as set out below.

Such submissions or observations must be received by ALAB not later than **1st March 2024**. If they are not received before the expiration of this period ALAB will, without further reference to you, determine the appeals. This notice is being copied to all parties to the appeals.

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ALAB has not made a final decision on whether to hold an oral hearing of the appeals. However, in light of the submissions to date and the position in relation to data deficiencies, it does not appear that it would serve any useful purpose at this time. The Board will make a final decision in light of any submissions made on foot of this notice.

On receipt of any further submissions, ALAB accordingly intends to consider all the submissions received, complete the assessments required under EU law and to proceed to make a final determination on the appeals.

Please ensure to quote the following reference: **AP36/2019 (S46 01.2024)** in your reply.

Please note that hard copies of the documents referred to 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

A handwritten signature in cursive script that reads 'Margaret Carton'.

Margaret Carton
Secretary to the Board

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AP34-48/2019 – Wexford Schedule of Documents

The Minister - Schedule of Documents

Dated	Document Description	Link to Website
19 September 2023	Submission from MI	https://alab.ie/media/alab/2023%2009%2020%20-%20AP34-48-2019%20-%20S46%20Response%20from%20MI%20-%20S46%20June%20SPA.pdf
19 September 2023	Submission from MI	https://alab.ie/media/alab/2023%2009%2020%20-%20AP34-48-2019%20-%20S46%20Response%20from%20MI%20-%20S46%20August%20SAC.pdf
25 September 2023	Submission from Wexford Mussels Ltd	https://alab.ie/media/alab/2023%2009%2027%20-%20AP35-2019%20S46%20reply%20from%20Wexford%20Mussels%20(Applicant)_Redacted.pdf
26 September 2023	Submission from NPWS	https://alab.ie/media/alab/2023%2009%2025%20-%20AP34-48-2019%20-%20S46%20Response%20from%20NPWS.pdf
29 September 2023	Submission from An Taisce	https://alab.ie/media/alab/2023%2009%2029%20-%20AP34-48-2019%20-%20S46%20Response%20from%20An%20Taisce.pdf
29 September 2023	Submission from William Fry LLP on behalf of – Crescent Seafoods Ltd	https://alab.ie/media/alab/2023%2009%2029%20-%20AP48-2019%20-S46%20Email%20&%20Response%20for%20Crscnt%20Seafoods%20Ltd%20CO%20William%20Fry%20Sols.pdf
29 September 2023	Submission from William Fry LLP on behalf of – Fjord Fresh Mussels Ltd	https://alab.ie/media/alab/2023%2009%2029%20-%20AP41-2019%20-S46%20Email%20&%20Response%20for%20Fjord%20Fresh%20Mussels%20Ltd%20CO%20William%20Fry%20Sols.pdf
29 September 2023	Submission from William Fry LLP on behalf of – Loch Garman Mussels Ltd	https://alab.ie/media/alab/2023%2009%2029%20-%20AP42-44-2019%20-S46%20Email%20&%20Response%20for%20Loch%20Garman%20Harbour%20Mussels%20Ltd%20CO%20William%20Fry%20Sols.pdf
29 September 2023	Submission from William Fry LLP on behalf of – Riverbank Mussels Ltd	https://alab.ie/media/alab/2023%2009%2029%20-%20AP45-46-2019%20-S46%20Email%20&%20Response%20for%20Riverbank%20Mussels%20CO%20William%20Fry%20Sols.pdf
29 September 2023	Submission from William Fry LLP on behalf of – TL Mussels Ltd	https://alab.ie/media/alab/2023%2009%2029%20-%20AP38-40-2019%20-S46%20Email%20&%20Response%20for%20TL%20Mussels%20Ltd%20CO%20William%20Fry%20Sols.pdf
29 September 2023	Submission from William Fry LLP on behalf of – WD Shellfish Ltd	https://alab.ie/media/alab/2023%2009%2029%20-%20AP47-2019%20-S46%20Email%20&%20Response%20for%20WD%20Shellfish%20Ltd%20CO%20William%20Fry%20Sols.pdf
05 December 2023	KRC Ecological Supplementary Report	https://alab.ie/media/alab/2023%2012%2006%20AP2034-48%20Wexford_ALAB_SupplReport_KRC_FINAL.pdf