

**AP1/2016**

**EAMONN CAFFREY**

**DRUMCLIFF BAY**

**(SITE REF T11/85)**

**APPEAL**

**NOTICE OF APPEAL UNDER SECTION 40(1) OF  
FISHERIES (AMENDMENT) ACT 1997 (NO. 23)**

Name and address of appellant:

Telephone: /                      Fax:  
Mobile Tel: As above              E-mail address: ,

Subject matter of the appeal:

Ministerial decision to refuse granting of aquaculture license in respect of license  
application T11-85 concerning Ardtermon/Drumcliff Bay, Co Sligo.

Site Reference Number:- T11-85

(as allocated by the Department of Agriculture, Food and the Marine)

Appellant's particular interest

in the outcome of the appeal:

The appellant is hopeful of a positive outcome that will lead to the cultivation of oysters  
in the respective area concerned.

Outline the grounds of appeal (and, if necessary,  
on additional page(s) give full grounds of the  
appeal and the reasons, considerations and  
arguments on which they are based):

Please see attached document setting out the ground of appeal based on items listed under  
points A-J.

Fee enclosed:.....380.-92..... €

(payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture  
Licensing Appeals (Fees) Regulations, 1998 (S.I. No. 449 of 1998))(See Note 2)

Signed by appellant: *Eamon Coffey* ..... Date: 13/12/16

**Note 1:** This notice should be completed under each heading and duly signed by the appellant and be  
accompanied by such documents, particulars or information relating to the appeal as the appellant considers  
necessary or appropriate and specifies in the Notice.

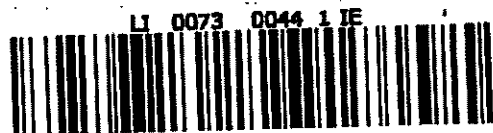
**Note 2:** The fees payable are as follows:

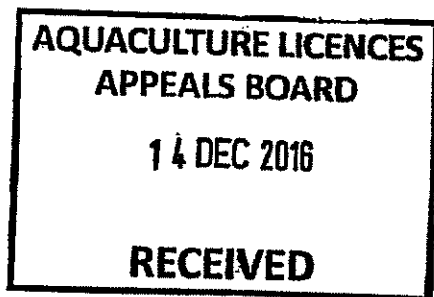
Appeal by licence applicant.....	€380.92 ✓
Appeal by any other individual or organisation	€152.37
Request for an Oral Hearing (fee payable in addition to appeal fee)	€76.18

In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded.

**AQUACULTURE LICENCES  
APPEALS BOARD**  
  
14 DEC 2016  
  
**RECEIVED**

DELIVERED





Eamonn Caffrey

13<sup>th</sup> December 2016

Dear Sir/Madam,

**RE: Aquaculture License Application T11-85 - Ardtermon/Drumcliff Bay**

My name is Eamonn Caffrey and I wish to appeal a decision that was taken by the minister to refuse approval for an aquaculture license in Drumcliff Bay, Co. Sligo. The license application was concerned with the cultivation of oysters using bags and trestles. The decision reached by the Minister was taken on the 15<sup>th</sup> November 2016.

I made the application to the Department of Agriculture, Food and the Marine for this particular site in 2013. The site went through an initial pre-screening in 2016 and again there were no concerns or objections put forward or made known concerning the application. Suffice it say, all indications to proceed were strongly positive at this stage of the process.

At the end of May 2016, I received notification from the Department that I must serve public notice within 3-weeks of the date of the Department's letter advising of the requirement to publicly make known my ambition under the application for aquaculture license. Accordingly, the public notice was published in the Sligo Newspaper on 14<sup>th</sup> June 2016.

During the month of August 2016, I was made aware by the Department that no formal objections were received albeit a number of observations were made and some suggestions that appropriate conditions might merit further consideration. In this light, any concerns noted were thought to reflect good practice and this was whole-heartedly embraced. I gratefully acknowledged this advice and provided my full acceptance to comply with any identifiable and relevant conditions set forth at a future licensing process by way of acknowledging the Department's notice to me that no formal objections were made in response to the public notice. To my mind, the application had met all demands in terms of pre-screening, public notice and nothing further stood in the way that could inhibit a successful outcome.

On the 16<sup>th</sup> November I received notification from the Department that the license was to be refused and on that basis I would like to appeal this decision as I feel it was a very unfair decision.

My understanding in talking with Bord Iasciagh Mhara, is that any issues regarding the license application should be made known at the pre-screening stage before the site goes for public notice by way of local or national newspaper. This was not the case. The first time I became aware of any issue or concerns regarding the site application was upon receipt of the Minister's decision to refuse the application. Up to this point, all indications were strongly positive and I was confident of a successful outcome given that there were no objections nor any other reason to think the application would be deemed unsuccessful.

Please find attached a report that outlines my grounds for appeal. I welcome your fair and respectful consideration of this request to appeal the license application.

I am available to respond to any requests you may have to give this matter your full consideration.

Thank you for taking the time to consider this request to appeal the decision regarding the above matter.

Yours sincerely,

A handwritten signature in black ink that reads "Eamonn Caffrey". The signature is written in a cursive style with a large, sweeping flourish at the end.

Eamonn Caffrey

LICENSE APPEAL FOR REFUSAL OF AQUACULTURE LICENSE

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**A report prepared for the Aquaculture License  
Appeals Board - ALAB**

Appeal against the refusal by the Minister for Agriculture, Food and The Marine to grant Aquaculture and Foreshore license to Dr. Eamonn Caffrey for the cultivation of oysters using bags and trestles.

The reasons for the appeal given in the report are those considered appropriate at the time of its preparation.

Dr. Eamonn Caffrey

**Location of Site Appealed:** Ardtermon/Drumcliff Bay, Co. Sligo

**Application Ref:** T11/85

**Appellant:** Eamonn Caffrey

**The grounds for the appeal:**

The Minister refused granting of a license for oyster culture on 15<sup>th</sup> November 2016.

The reason for the refusal decision is that the site is located in an area that is important to the Bar-tailed Godwit and this species is negatively affected by oyster trestle farming.

The area of Ardtermon Strand is currently free of aquaculture activity. There are concerns about the significant impacts of aquaculture development in this area based on the conservation objectives of Drumcliff Bay Special Protection Area (SPA) for the Bar-tailed Godwit.

Of particular concern is the high degree of variability in Bar-tailed Godwit numbers observed during different counts at the site. Given the data limitations identified it is difficult to be fully conclusive about the likely interaction between the proposed aquaculture and the shorebird site usage.

**Source:** Department Agriculture, Food and Marine 15<sup>th</sup> November 2016.

I would like to appeal the decision for the reasons set out under points A-J shown below, taking into account the appropriate assessment conclusion statement and the appropriate assessment mitigation measure as part of the appropriate assessment of Drumcliff Bay Special Protection Area (004013) and Cummeen Harbour Special Protection Area (004035), which was published in April 2015.

**Appropriate Assessment conclusion statement**

In Drumcliff Bay SPA, the primary risk of the potential impact on Bar-tailed Godwit at Ardtermon Strand where trestles could displace is 4.66%-6.3% of the SPA population.

Trend analysis has shown that Bar-tailed Godwit is, however, increasing within the SPA. Some caution must, however, be exercised in assessing impacts at Ardtermon

as the assessment is based on a relatively restricted data set (4 no. NPWS low tide counts from 2010 / 2011).

**Appropriate assessment mitigation measure**

Note is taken of the AA recommendation to monitor IW ebs data for Bar-tailed Godwit at Ardtermon strand and other key sites for this species.

**Source: Appropriate Assessment Conclusion Statement for Aquaculture Activities in Cummeen Strand/Drumcliff Bay. Marine Institute 2015.**

**Grounds of Appeal:**

**A) Bar-tailed Godwit numbers within Drumcliff Bay are stable.**

There is no evidence to suggest that aquaculture activities within the proposed site will negatively impact the conservation objectives for this designated feature of the Drumcliff Bay SPA.

The status of this bird is favourable in population which means that the population is stable/increasing.

The population trends in Drumcliff Bay SPA are positive for Bar-tailed Godwit.

It is not a bird of conservation classified as a red-listed species in County Sligo.

It is a wintering bird, meaning that it does not live in Ireland, but is in Ireland from October to April, which in oyster farming terms, are the least active months for oyster farming in Ireland.

**National trends indicate that Bar-tailed Godwit is a growing population in Ireland, and national figures collected indicate that that this is a stable trend nationally, and the population trends in Drumcliff Bay SPA are deemed to be positive.**

**Source: (National Parks and Wildlife 2013).**

**B) The Appropriate Assessment applied tests in the Drumcliff Bay SPA, with corresponding threshold values to determine whether benthic habitats or waterbird populations would be negatively impacted by the current levels of cultivation were undertaken in this assessment.**

In the case of habitat, a disturbance of less than 15% of the habitat area is deemed insignificant. The result for this proposed license site was 7.8%.

Negative impacts can be expected if more than 25% of the total Drumcliff Bay waterbird population is displaced. In this case the potential for the displacement for the Bar-tailed Godwit at Ardtermon strand stood at 4.66%, significantly less than the negative impact rate of 25%.

**Appropriate assessment applied tests all show this site is below any thresholds for immediate concern.**

**C) Two other appropriate assessments out of eleven bays surveyed as of December 2016, by the Marine Institute, can be used as an example of the impact of the Bar-tailed Godwit population and impact of oyster farming.**

The Special Conservation Interests (SCIs) of the Dungarvan Harbour SPA and Castlemaine SPA both include the Bar-tailed Godwit as a Special Conservation Interest, like Drumcliff Bay, and The Dungarvan Appropriate assessments has stated in their concluding statement that: "Therefore, there is no evidence that the development of intertidal oyster cultivation in the late 1980s, the period of major expansion in the 1990s and the intensification of the activity in the 2000s has affected the long-term population trends of Bar-tailed Godwit at Dungarvan Harbour".

Oyster production in Dungarvan Harbour stands at 2000 tonnes of oysters cultivation. Oyster production in Castlemaine is 600 tonnes. Oyster production in Drumcliff Bay is 70 Tonnes.



**Appropriate assessment information from two other bays in Ireland clearly states that there is no evidence that oyster farming has affected long term population trends of Bar-tailed Godwit in those bays that have oyster farming**

**D) Drumcliff Bay ranks number 18 of national importance for the Bar-tailed Godwit. At Castlemaine Harbour, Co. Kerry, the Bar-tailed Godwit is ranked number 15 and in Dungarvin, Co. Waterford, it is ranked at number 4.**

**(National Parks and Wildlife 2013)**

**Bar-tailed Godwit population in Sligo is the lowest ranked region as an important area for this bird, yet this license has been refused, when licenses have been granted in bays where this bird is higher in importance in the national ranking of Ireland.**

**E) Lissadell/Balligilgan strand in Drumcliff Bay SPA has over 14% by area affected by oyster trestles. According to the appropriate assessment for this bay, the subsite is important for Bar-tailed Godwit. This site has been in operation since 1990, and in 2015, produced 70 Tonnes oysters. Baseline data overall along with trend data indicates that this species is still increasing.**

**Data for the Drumcliff SPA shows that Aquaculture is not having an affect on the population of Bar-tailed Godwit as exemplified by the oyster production already in place in Drumcliff Bay.**

**F) The four bird counts for the Bar-tailed Godwit were taken in October 2010/2011. It has been known that the passage migration in Ireland for Bar-tailed Godwit can begin as early as June, with peak numbers passing through in September/October. So counts were taken at peak times for this bird.**

**Could these bird counts not have been undertaken more frequently and at more regular intervals to get a more accurate assessment of bird counts in the area, so to make the decision whether to license in a more scientific and unbiased manner.**

**G) According to the study of the Bar-tailed Godwit bird counts from the Atkins report, the counts were taken on days when the weather on the day was “extremely challenging”\***

**Conducting counts in less than ideal conditions affects count accuracy as distant flocks will be much harder to count in heavy rain and/or strong winds and because of the great mobility of migrant waterbirds, changes in their distribution, and the fluctuations in their populations over time. This could have had a significant bearing on results.**

**H) No objections were received from the general public or bird authorities such as Birdwatch Ireland or National parks and wildlife.**

**I) The site is within the shellfish designated area of Drumcliff bay which has been designated a water classification of “B”.**

**J) A pre-screening assessment was carried out in 2016 and had no queries or objections were put forward before it went for advertising in the Sligo Champion in June 2016.**

**\*\* Weather conditions during the winter of 2010/11 proved extremely challenging for fieldworkers, December 2010 being the coldest on record (Met Éireann, 2010). It should also be borne in mind that the cold weather is likely to have affected the numbers and distribution of waterbirds at the site, as well as nationally, as was the case in the previous cold winter of 2009/10 (Crowe et al. 2011)**

**References:**

Atkins Ecology, April 2015 Marine Institute bird studies Annex 11 Drumcliff Bay Special Protection Area (004013) and Cummeen Harbour Special Protection Area (004035) appropriate assessment of Aquaculture.

Atkins Ecology, Dungarvan Harbour SPA: Monitoring of waterbird distribution across the tidal cycle, 2014/15 June 2015.

Atkins Ecology, Dungarvan Harbour Special Protection Area: Appropriate Assessment of Intertidal Oyster Cultivation, February 2014 including consideration of Helvick Head to Ballyquin SPA and Mid-Waterford Coast SPA.

Atkins Ecology, Marine Institute Bird Studies in support of Castlemaine Harbour Appropriate Assessment, 2011

BIM annual production and employment survey 2014

DE Balmer, S Gillings, B Caffrey, RL Swann, IS Downie . Bird Atlas 2007-11: the breeding and wintering birds of Britain and Ireland

Gittings, T. And O'Donoghue, P.D. 2012. The effects of intertidal oyster culture on the spatial distribution of waterbirds. Report prepared for the Marine Institute. Atkins, Cork. Pp 170

Hilgerloh, G., O'Halloran, J., Kelly, T. C., and Burnell, G. M. 2001. A preliminary study on the effects of oyster culturing structures on birds in a sheltered Irish estuary. *Hydrobiologia* 465: 175-180

National Parks and Wildlife, 2013, Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC (000627) Conservation objectives supporting document - marine habitats.

National Parks & Wildlife August 2013 Drumcliff Bay Special Protection Area Site Code 4013) Conservation Objectives Supporting Document

