



Aquaculture Licences Appeals Board

Supplemental Report – External Consultant

Appeal Ref No. AP34-48/2019

Appeal description: Appeals against Minister's granting of licences
for bottom cultivation of mussels in Wexford Hbr, Co. Wexford

Technical Advisor: Kendrew Colhoun

Date of site inspection: 13th February 2023

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1.0 General Matters / Appeal Details

1.1 Licence Application

Department Ref No: AP34-48/2019

Appeal Ref	Site Ref	Applicant
AP34/2019	T03/30E	T.L. Mussels Ltd
AP35/2019	T03/35A,B,C,F & G	Wexford Mussels Ltd
AP36/2019	T03/48A	Noel & Sheila Scallan
AP37/2019	T03/91A	Noel & Sheila Scallan
AP38/2019	T03/30A2, B, C & E	T.L. Mussels Ltd
AP39/2019	T03/030/1D	T.L. Mussels Ltd
AP40/2019	T03/099A	T.L. Mussels Ltd
AP41/2019	T03/46A, B & C	Fjord Fresh Mussels Ltd
AP42/2019	T03/047A, B, C	Loch Garman Harbour Mussels Ltd
AP43/2019	T03/083A	Loch Garman Harbour Mussels Ltd
AP44/2019	T03/085A	Loch Garman Harbour Mussels Ltd
AP45/2019	T03/049A, B, C, C1 & D	Riverbank Mussels Ltd
AP46/2019	T03/077A	Riverbank Mussels Ltd
AP47/2019	T03/52A & B	WD Shellfish Ltd
AP48/2019	T03/55E	Crescent Seafoods Ltd

Applicants: WD Shellfish Ltd, TL Mussels Ltd, Wexford Mussels Ltd, Noel & Sheila Scallan, Fjord Fresh Mussels Ltd, Loch Garman Harbour Mussels Ltd, Riverbank Mussels Ltd, Crescent Seafoods Ltd

Minister's Decision: Grant with variation (in all cases)

2.0 Background

KRC Ecological (hereafter KRC) provided a report to ALAB¹ in June 2023 which focused on a review of waterbird data for Wexford Hbr as availability/analysis applied in respect of the licence applications and appeals.

Accepting that the Wexford Hbr AA by Atkins was comprehensive and utilized available information thoroughly, data inadequacies were such that potential impacts of applications could not be assessed adequately to remove all reasonable scientific doubt as to the effects of the works on the SPA concerned. This would have been contrary to EU Directives and ECJ case law. The data inadequacies include those related to species numbers and trends, species distribution within the site, and behaviour in relation to existing activities.

In conclusion we recommended that it was ‘impossible to assess the potential impacts thoroughly even now, as much of the inadequacies apparent in the 2016 Appropriate Assessment remain’. We further recommended that, until a detailed programme of original field research is undertaken, it is not possible to assess the potential impacts of the proposed aquaculture activities to meet the requirements of an AA.

ALAB circulated a copy of the report referred to above (the ‘KRC Report’) in June 2023 and invited responses by the end of September 2023.

The table below lists those to whom the report was sent and the subsequent responses received to it.

Party	S46 SPA Report issued	S46 SPA Report Response Received	Date of Response (to ALAB)
Appellant			
Oonagh Duggan, BirdWatch Ireland	Y	N	n/a
Wexford Mussels Ltd	Y	Y	25/09/2023
Noel & Sheila Scallan	Y	N	n/a
T.L. Mussels Ltd	Y	Y	29/09/2023
Fjord Fresh Mussels Ltd	Y	Y	29/09/2023
Loch Garman Hbr Mussels Ltd.	Y	Y	29/09/2023
Riverbank Mussels Ltd	Y	Y	29/09/2023
WD Shellfish Ltd	Y	Y	29/09/2023
Crescent Seafoods Ltd	Y	Y	29/09/2023
Observers/proscribed Body			
An Taisce	Y	Y	29/09/2023
Marine Institute	Y	Y	19 & 20/09/2023
NPWS	Y	N	25/09/2023
IFI	Y	N	n/a
BIM	Y	N	n/a
Minister	Y	Y	21/09/2023

¹ ‘An assessment of available waterbird data for Wexford Harbour and Slobs, Co. Wexford. For use in respect of the assessment of multiple aquaculture licence appeals within Wexford Harbour SPA’

3.0 Technical Advisor's Evaluation of the Issues in Respect of Submissions/Observations Received

William Fry LLP (on behalf of applicants Fjord Fresh Mussels Ltd, Riverbank Mussels Ltd, Crescent Seafoods Ltd, Loch Garman Harbour Mussels Ltd, TL Mussels Ltd and WD Shellfish Ltd. (29 Sept 2023)

Duplicate responses were received from W Fry LLP on behalf of the above six clients/applicants. This notes the KRC report 's main finding 'there are significant data gaps and uncertainties such that it is not possible to assess the potential impacts of the relevant aquaculture activities', and that a programme of work to address these data gaps is required.

They add that their clients expect to engage with any future analysis [underlying a revised AA] and to be given the opportunity to consider all matters relating to the 'intended' analysis.

The responses received from William Fry LLP on behalf of the six clients does not challenge the KRC report findings, accepting the weaknesses of the AA (arising from data limitations) and appears to accept that ALAB cannot 'review the grant of a licence at this time' and that further work is required. Their request to have access to all documentation and information gathered as part of the intended analysis seems reasonable at the appropriate time and be useful for the purposes of transparency insofar as possible.

Wexford Mussels Ltd (25 Sept 2023)

Wexford Mussels Ltd note ALABs notice of intention to determine the appeal by March 30, 2024 and the findings of the KRC report. They observe that the findings of this (KRC) Report highlight that the initial (Atkins) report falls far short of the required standard for an AA and the recommendation that a scientific study of 2-3 years be undertaken. They also provide 7 points and an additional annex in relation to aquaculture in general and in Wexford specifically.

Wexford Mussels Ltd by inference appear to accept the findings of the KRC report insofar as the inadequacy of the data means that a full AA cannot be undertaken. They are supportive that 'if such a [2-3 scientific study is to be done] that they would have no objection to it'.

Their further commentary, provided for consideration are generally points raised in support of the positive environmental and economic benefits of the industry which should be noted, filed for reference for any future reviews and, in my opinion, do not materially alter the process thus far.

An Taisce (29 Sept 2023)

An Taisce's response does not refer to the KRC report specifically, but overall, agrees with ALAB's conclusion that it is not appropriate to 'address the deficiencies in the scientific data in the context of the present appeal where a 4-year programme of investigations is required'. They add that 'where there is a lack of certainty as to the absence of adverse effects on SAC and SPA sites, consent for a project cannot be lawfully granted'. They are supportive of licences not being granted.

An Taisce also refer to the precise applications being referred to in appeals and wish to highlight matters in this regard.

The response by An Taisce is aligned to the basis of their initial objections which concluded that licences should not be granted at this time – they do not refer to the KRC Report.

The matters relating to licences and processes are something of a procedural / legal nature which ALAB staff should check.

NPWS (25 Sept 2023)

NPWS provide a detailed response to correspondence received from ALAB. The note the submissions provided by NPWS in June 2018 and reiterate these points under 13 headings.

NPWS reiterate that an 'increasingly cautious approach be taken with respect to licencing of activities likely to cause disturbance of each community type should not exceed an area of approximately 15%', and that an inter-Departmental management review is required.

That the precautionary principle be applied in all cases where data is lacking – to comply with clear guidance from the EC.

They raise points about the location and manner by which deep dredging will occur (referring to the conclusion statement of the AA).

They make recommendations on precisely when/where vessel- and human-activity associated with aquaculture should and should not occur to minimize disturbance to grey seals. They refer to the availability of more recent information which will be provided to the Marine Institute/DAFM for aquaculture licencing and other matters.

Referring to the AA report, NPWS highlight that the range of 9 measures/responses proposed needs to be compiled before an adequate assessment be undertaken for this site.

Information on adaptive management strategy on issues of anthropogenic disturbance and significant likelihood of an increase in predator species at tern sites is insufficient for NPWS to provide support.

That piscivorous species (incl Red-breasted Merganser which were screened out) may benefit from trestle structures when it could be argued that the trestles act as an impediment.

Further work is required on Common Scoter and Red-throated Divers should be undertaken.

The mitigation via adaptive management proposed in the AA is incomplete.

The response from NPWS is detailed and refers heavily to the AA, highlighting a number of failings. These are broadly summarized as the AA being inadequate in terms of detail (to enable NPWS to make judgements), or flawed with respect to the availability of data. The make no explicit reference to the KRC Report.

DAFM Minister (21 Sept 2023)

The Minister's office noted that DAFM had already provided submissions at an earlier stage and had no further additions/submissions or observations.

Marine Institute (19 & 20 Sept 2023)

Two detailed responses were received from the Marine Institute.

The Marine Institute had no additional observations based on the communications to it in June (which included the KRC report) but some general and relevant information with respect to context.

The AA (from 2014/15) process has undergone significant modification/improvement since then, dictated by case law and Judicial Reviews. The inadequacies in the data available at the time for preparation of the AA were and are acknowledged.

The removal of licence boundaries over intertidal habitat was expected to remove any risk to a number of the wader species referred to in the KRC report which are potentially impacted by aquaculture activity.

With respect to disturbance impacts on Red-breasted Merganser, the continued presence of the species, coupled with the potential attraction of food via the habitat mosaic created may not be negative. They added that there is unlikely to be a great increase in boat activity in the Inner Harbour if new licences are issued.

The Marine Institute point out that there are marked differences between the Wadden Zee system and that of Wexford Hbr (reference is made to Wadden Zee in KRC Report). In the Wadden Zee the primary issue was removal of mussel seed and cockles from intertidal areas which put the activity in direct conflict with wading birds. This would not be the case in Wexford where seed would be sourced from outside the bay (e.g. subtidal beds in the Irish Sea).

In separate points, the Marine Institute refer to the findings of the AA (Atkins) report, explaining in some detail the rationale for application of the 15% threshold (NPWS identified a level of 15% spatial overlap of likely disturbing activities on marine biological communities as a threshold for management interventions). In lieu of direct guidance from the EU, this threshold was developed by NPWS and widely applied (since 2011) for aquaculture licencing assessments and advocate for an increasingly precautionary approach. Where potentially-disturbing activities are proposed and the 15% threshold exceeded, an inter-departmental management review is recommended. Marine Institute are unaware as to whether such a review was undertaken [in Wexford] and are of the view that 'such an avenue would be open to ALAB'.

The historical record shows that mussel and mussel farming have long existed within Wexford Harbour but it is unclear what proportion of existing stock can be considered 'natural' nor what contribution aquaculture makes towards maintaining stocks.

The Marine Institute point to a considerable body of peer-reviewed scientific evidence which show the potential mitigation role of bivalves in controlling eutrophication in coastal waters. They suggest that positive effect may be occurring within Wexford Hbr.

In relation to habitats created by shellfish, the Marine Institute describe the potentially beneficial effects provided by the heterogeneity of the habitats created via increasing species diversity at the overall site level.

The Marine Institute conclude that 'bottom mussel culture, at current levels, could conceivably have a positive role in ecosystem function in terms of nutrient and phytoplankton mediation as well as habitat provision'. Ongoing addition of mussel to the system may have additional similar benefits. Other important mitigating/qualifying factors are that (a) with one exception no culture will occur in inter-tidal and shallow subtidal areas, (b) whilst disturbance to beds (through dredging etc) will occur over the entire area where mussels are placed, the areas where culture will occur will not cover 100% of the seabed at those sites, (c) some redundancy be built in to licencing to allow for increased stock to compensate for losses (due to local hydrodynamics).

The Marine Institute make a number of valid and well-argued points about mitigation, potential positive effects and existing controls and other mitigations within Wexford Hbr.

An inter-departmental review of potential licenced activities would be helpful to review the status quo, issues and future plans, especially with respect to balancing the needs of the industry with the QI birds and habitats with NPWS for the relevant Directives.

The Marine Institute's response do, to some degree, address some of the concerns raised by other Appellants (BirdWatch Ireland and An Taisce), for example, with respect to potential impacts of loss of feeding areas by waders, and disturbance to species such as Red-breasted Merganser. Overall, however, it is my view that the over-arching conclusions with respect to data inadequacy and an inability to prove beyond reasonable scientific doubt stand. I believe there would be merit in an inter-Departmental management review meeting being convened to discuss some of these issues.

4.0 Recommendation of Technical Advisor with Reasons and Considerations

The industry (applicants) responses appeared to accept that (a) the AA was inadequate, (b) primarily due to the lack of data, and (c) that a multi-year study to address these inadequacies would be supported with their engagement at at least the analysis stage. An Taisce agreed that the AA was inadequate and insufficient to base licencing decisions on.

Both NPWS and The Marine Institute gave detailed responses. As the competent authority responsible for the protection of Wexford Harbour, NPWS were precautionary and highlighted a need for a better evidence-base on which to make decisions including potential mitigation measures. The Marine Institute accepted the failings of the AA (with respect to data inadequacies) but made sound arguments with respect to the potential positives of existing and expansion of mussels in Wexford Harbour.

It is my opinion that the responses received are in agreement that a further study is required. This study would benefit from being very carefully planned and involve The Marine Institute, NPWS and the industry to ensure a transparent and robust, well-designed and executed project be carried out. This should not solely focus on the potential negative impacts of activities on QIs but also consider the broader ecosystem and certainly the potential positive ecosystem services for *inter alia* nutrient cycling.

External Consultant: *Kendrew Colhoun*

Date: Dec 05, 2023