



ALAB

An Bord Achomhairc Um
Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board

Aquaculture Licences Appeals Board

Technical Advisor's Report – Shellfish Appeals

Appeal Ref No. AP3-16/2020

Appeal description:

Appeal against the decision of the Minister for Agriculture, Food and the Marine to grant Aquaculture and Foreshore licences in November 2019, for the cultivation of Pacific Oysters using bags and trestles and for the cultivation of Clams at fourteen sites in Ballyness Bay, County Donegal.

Technical Advisor: Dr Ciar O'Toole

Date of site inspection: 22 October 2022

Version: Final, 10 April 2024

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1.0 General Matters / Appeal Details

1.1 Licence Application Details:

Appeal Ref.	Site	Applicant	Licence Type	Aquaculture Type	Minister's Decision
AP3/2020	T12/407B	Joseph M Coll	New License	Pacific Oysters using bags & trestles	Grant
AP4/1&2/2020	T12/409A	Edward & Paul O'Brien	New License	Clams on wooden trays under mesh	Grant with variation
AP5/2020	T12/409B	Edward & Paul O'Brien	New License	Clams & Pacific Oysters	Grant with variation
AP6/2020	T12/441A	Anthony McCafferty	New License	Clams & Pacific Oysters	Grant
AP7/2020	T12/441B	Anthony McCafferty	New License	Pacific Oysters using bags & trestles	Grant
AP8/2020	T12/441C	Anthony McCafferty	New License	Pacific Oysters using bags & trestles	Grant
AP9/2020	T12/455A	Seamus O'Donnell	New License	Pacific Oysters using bags & trestles	Grant with variation
AP10/2020	T12/455B	Seamus O'Donnell	New License	Pacific Oysters using bags & trestles	Grant with variation
AP11/2020	T12/500A	Joseph Coll	New License	Pacific Oysters using bags & trestles	Grant
AP12/2020	T12/502A	Joseph Coll	New License	Pacific Oysters using bags & trestles	Grant with variation
AP13/1,2,3/2020	T12/510A	Tully Shellfish Ltd.	New License	Pacific Oysters using bags & trestles	Grant
AP14/2020	T12/514A	Joseph Coll	New License	Pacific Oysters using bags & trestles	Grant
AP15/2020	T12/515A	Joseph Coll	New License	Pacific Oysters using bags & trestles	Grant
AP16/1&2/2020	T12/516A	Joseph Coll	New License	Pacific Oysters using bags & trestles	Grant

1.2 Appeal Details:

Date Appeals Received:	AP3/2020	2 January 2020
	AP4/1/2020	2 January 2020
	AP4/2/2020	2 January 2020

AP5/2020	2 January 2020
AP6/2020	2 January 2020
AP7/2020	2 January 2020
AP8/2020	2 January 2020
AP9/2020	2 January 2020
AP10/2020	2 January 2020
AP11/2020	2 January 2020
AP12/2020	2 January 2020
AP13/1/2020	2 January 2020
AP13/2/2020	2 January 2020
AP14/2020	2 January 2020
AP15/2020	2 January 2020
AP16/1/2020	2 January 2020
AP16/2/2020	2 January 2020

Location of Sites Appealed: Foreshore in Ballyness Bay, Co. Donegal

Consolidation: The Board consolidated these appals on the 25 November 2021.

1.3 Name of Appellant (s):

AP3/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP4/2020	
AP4/1/2020	John Boyle, Magheraroarty, Gortahork, Letterkenny, Co. Donegal
AP4/2/2020	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP5/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP6/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP7/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP8/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP9/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP10/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6

AP11/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP12/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP13/2020	
AP13/1/2020	Coiste Glan & Glas an Fhál Carraigh agus Cósta Glan agus Glas an Fhál Carraigh, Cill Ula, An Fál Carrach, Co Dhún na nGall
AP13/2/2020	Falcarragh Tourists & Traders Association, Falcarragh, Letterkenny, Co. Donegal
AP13/3/2020	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP14/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP15/2020	
	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6
AP16/2020	
AP16/1/2020	Joe Friel, Killult, Falcarragh, Letterkenny, Co. Donegal
AP16/2/2020	Save Ballyness Bay SAC Action Group, Killult, Falcarragh, Co. Donegal, F92 N6X6

1.4 Name of Observer (s)

- David Friel, Coastal Officer, Donegal County Council, Lifford, Co. Donegal
- An Taisce, Tailors' Hall, Back Lane, Dublin, D08 X2A3

1.5 Grounds for Appeal

AP3/2020 – T12/407B

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 1 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues:

1. Ineffective Public Consultation: the appellant claims the Minister was in breach of the Aarhus Convention regarding proper public consultation and that they have made a submission to the Aarhus Convention Compliance Committee regarding this issue. They claim the Minister did not advertise the proposed development in an appropriate, effective manner and did not take the appellant's views into consideration once they became aware of the proposed development. They also claim that the notices were only published in English and not Irish.
2. Inadequate Appropriate Assessment (AA) and AA Conclusion Statement: the appellants claim the Minister made unsubstantiated assumptions in determining

that the proposed development would have no significant impact on Natura 2000 sites. The appellants then go on to detail a number of issues they feel were not dealt with sufficiently in the AA Report or the AA Conclusion Statement and do not fulfil the requirements for an AA. These include:

- a. Screening out habitats without sufficient explanation
 - b. Unresolved issues, that is, highlighted issues within the AA report were not resolved in the AA Conclusion Statement
 - c. Inadequate consideration of ex-situ effects
 - d. Inadequate consideration of increased traffic and access to the site and uncertainty over access to some sites
 - e. Lack of assessment for alternative proposed access route
 - f. Potential impacts on local otter population
 - g. Potential impacts on local seal populations (species not specified),
 - h. Not fully considering physical and biological impacts including biological effects, seston filtration, shading, fouling, introduction of non-native species, nutrient exchange and surface disturbance
 - i. The potential for triploid Pacific oysters to reproduce.
 - j. The risk posed by introducing Manila clam to the bay.
 - k. Incorrect information regarding a lack of fishing activity in the bay
 - l. Inadequate consideration on in-combination effects
 - m. Inadequate consideration of the physical impacts of aquaculture
 - n. The assessment of all 18 applications in one AA report rather than individually
 - o. Lack of a bathymetric survey
 - p. Inadequate consideration of identified residual impacts.
 - q. Inaccurate conclusions regarding the impacts on recreational users and tourists
 - r. Relying on conclusions from data assigned a “low confidence.”
 - s. Lack of consideration of facilities for packing and storage of harvested shellfish
 - t. Lack of inclusion of conditions under Section 7 (3) of the Fisheries Act (1997)
 - u. Inadequate consideration of the effect the proposed development will have on public access to the area.
3. Lack of an EIA: The appellant claims an EIA should have been carried out by the Minister for this development and that it contravenes the requirements under the Habitats Directive (rather than the EIA Directive)
 4. Incorrect conclusion of the Minister regarding potential impacts on the local economy
 5. Not a designated shellfish area: the applicants claim this indicates the area should not be licenced for shellfish aquaculture.

AP4/1/2020 – T12/409A

Applicant: Edward and Paul O'Brien, for the culture of Manila clams on wooden trays under mesh on a site of approx. 2.2 ha

Appellant: John Boyle

Issues:

1. The appellant claims to own the land across which the updated access route to Site T12/409A runs. The appellant has not been asked to give his permission for the applicants to have access through his lands, nor has he granted this permission.
2. The appellants lands are used by the native corncrake as a nesting site.

AP4/2/2020 – T12/409A

Applicant: Edward and Paul O'Brien, for the culture of Manila clams on wooden trays under mesh on a site of approx. 2.2 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP5/2020 – T12/409B

Applicant: Edward and Paul O'Brien, for the culture of Manila clams and Pacific oysters on a site of approx. 1.4 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP6/2020 – T12/441A

Applicant: Anthony McCaffrey, for the culture of Manila clams and Pacific oysters on a site of approx. 0.4 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP7/2020 – T12/441B

Applicant: Anthony McCaffrey, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.4 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP8/2020 – T12/441C

Applicant: Anthony McCaffrey, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.1 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP9/2020 – T12/455A

Applicant: Seamus O'Donnell, for the culture of Pacific oysters using bags and trestles on a site of approx. 1.6 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP10/2020 – T12/455B

Applicant: Seamus O'Donnell, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.7 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP11/2020 – T12/500A

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 1.5 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP12/2020 – T12/502A

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 4.6 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP13/1/2020 - T12/510A

Applicant: Tully Shellfish Ltd. for the culture of Pacific oysters using bags and trestles on a site of approx. 0.96 ha

Appellant: Coiste Glan & Glas an Fhál Carraigh agus Cósta Glan agus Glas an Fhál Carraigh

Issues:

1. Lack of public consultation by the Minister when granting the licence

2. Potential negative impact on local tourism interests which rely on the unspoilt nature of the area.
3. Potential negative impact on a local marked walk “The Ballyness Way” which begins at the pier adjacent to the proposed development and which continues along the shore. A main focus of this walk is the local wildlife.
4. The appellant claims the proposed development will cause environmental disturbance to a number of species including geese, gulls, seals, otters, corncrake, curlew and choughs and the site is also apparently close to an eelgrass bed.
5. The appellant claims the proposed development will be a health and safety risk to recreational users of the area.
6. Negative visual impact on the area due to the proposed development
7. Claims applicant provided false information regarding a nearby sewage outfall and by claiming the area is a designated shellfish area when it is not.
8. The proposed development will restrict seaweed harvesting in the area.

AP13/2/2020 - T12/510A

Applicant: Tully Shellfish Ltd. for the culture of Pacific oysters using bags and trestles on a site of approx. 0.96 ha

Appellant: Falcarragh Tourists & Traders Association

Issues:

1. Negative visual impact on the area due to the proposed development and resultant negative impact on local tourism
2. Insufficient detail in AA Report and AA Conclusion Statement, and insufficient consideration of the impacts on local people in both these documents
3. Potential for the proposed development to have a negative impact on the economy of the area.
4. Lack of public consultation by the Minister when granting the licence

AP13/3/2020 - T12/510A

Applicant: Tully Shellfish Ltd. for the culture of Pacific oysters using bags and trestles on a site of approx. 0.96 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP14/2020 - T12/514A

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.23 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP15/2020 - T12/515A

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.39 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

AP16/1/2020 - T12/516A

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.14 ha

Appellant: Joe Friel

Issues:

1. Lack of public consultation by the Minister when granting the licence
2. Negative visual impact on the area due to the proposed development
3. The appellant claims the proposed development will lead to houses in the area losing value and a loss of tourist revenue.
4. The appellant is concerned about the packing and processing of harvested shellfish and that no provision has been made for this in the application.
5. The appellant feels there should have been environmental, water quality and biological monitoring carried out before the licence for the proposed development was granted.
6. The appellant owns the land immediately adjacent to the proposed development and claims his access to the shore will be totally blocked by trestles.
7. Health and safety concerns regarding biological waste buildup and chemical contamination from the proposed development, along with potential hazards caused by broken trestles and lost oyster bags among other items.
8. Impacts of potential noise pollution on the appellants family and local wildlife
9. Impacts on local habitats and wildlife due to the development of an access route along the shoreline.
10. Impacts on wild mussel populations in the area.
11. Impacts on fishing and hunting rights granted to the applicant in the folio he holds for the lands owned by him which are adjacent to the proposed development.

AP16/2/2020 - T12/516A

Applicant: Joseph Coll, for the culture of Pacific oysters using bags and trestles on a site of approx. 0.14 ha

Appellant: Save Ballyness Bay SAC Action Group

Issues: As AP3/2020 – T12/407B above

1.6 Minister's submission

Section 44 of the Fisheries (Amendment) Act 1997 states that:

“The Minister and each other party except the Appellant may make submissions or observations in writing to the Board in relation to the appeal within a period of one month beginning on the day on which a copy of the notice of appeal is sent to that party by the Board and any submissions or observations received by the Board after the expiration of that period shall not be considered by it.”

No additional submission was made by the Minister in relation to these appeals.

1.7 Observer's Submissions

1. David Friel, Coastal Officer Donegal County Council, made a submission relating to access routes for a number of sites, claiming that Sites T12/407B, T12/500A, T12/514A and T12/515A (AP3/2020, AP11/2020, AP14/2020 and AP15/2020) have proposed site access routes which cross the southern/low end of the Dooey Peninsula at its narrowest, most vulnerable, point. His submission states that the introduction of heavy plant and machinery associated with the proposed aquaculture developments can only cause further degradation of this already fragile location.
2. An Taisce submitted a number of observations which are briefly detailed below and relate to all appeals under consideration here:
 - a. They stated that grey seals had not been sufficiently assessed in this case, that negative impacts on populations in nearby SACs could not be ruled out and that concerns raised in the AA report on this issue had not been sufficiently dealt with in the AA Conclusion Statement.
 - b. Insufficient screening of SPA sites, that is, sites were ruled out from further assessment without being properly assessed/screened. An Taisce feels that a full Stage 2 Appropriate Assessment should have been carried out for the SPA sites highlighted in their submission.
 - c. An Taisce dispute the use of 15% disturbance as an indication of an allowable disturbance level within a Natura 2000 site, claiming this has no scientific basis.

1.8 Applicant response

Four applicants responded to the appeal issues raised: Anthony McCaffrey, Tully Shellfish, Joseph Coll and Edward and Paul O'Brien.

1. Anthony McCafferty responded to the appeals made by Save Ballyness Bay SAC Action Group regarding his three sites T12/441A, T12/441B and T12/441C which relate to appeals AP6/2020, AP7/2020 AND AP8/2020:
 - a. He claims the bay is designated as an oyster production area and that previous aquaculture in the Bay had no negative effects.
 - b. He claims that the Minister did fulfil his obligations under the legislation regarding public consultation and disputes the appellants claim that a failure to publish the notice in Irish as well as English would be a hindrance to native Irish speakers.
 - c. He claims the appellant made a mistake regarding what they understand to be the access route to his sites and has provided a map to illustrate this.
 - d. He disputes the claim by the appellants that otters will be disturbed by the development.
 - e. He disputes the additional seal haul out sites as indicated by the appellants.
 - f. He disputes that his sites will result in reduced public access to the beach.
 - g. He disputes the existence of an active sea trout fishery.
 - h. He points out that triploid oysters (being for the most part sterile) are used specifically to reduce the chance of naturalisation of Pacific oysters and that concerns regarding reproduction relate to diploid oysters.

2. Tully Shellfish Ltd. submitted responses to the appellants on a number of issues relating to their site T12/510A which correspond to appeals AP13/1,2,3/2020. In response to the submission by Falcarragh Tourist and Traders Association, they stated:
 - a. The site at T12/510A had been selected to not be visible from any of the designated viewpoints in the County Donegal Development Plan 2018-2024 and that the site is not overlooked by any designated scenic routes or premises, and they foresee no conflicts with tourism interests in the Bay.
 - b. They dispute the claim that sustainable aquaculture and tourism would be in conflict, quoting a representative of Failte Ireland regarding promoting seafood businesses as a way of enhancing the visitor experience and that the proposed development will bring improvements to the local economy.
 - c. They suggest the issues raised regarding the inadequacy of the AA should be referred to the Marine Institute.
 - d. They also state that issues relating to the public consultation should be referred to the AFMD.

In response to the submission by Save Ballyness Bay SAC Action Group, they state that:

- a. In regard to the perceived conflict between tourism and shellfish aquaculture, they refer to their earlier answer regarding the Falcarragh Tourist and Traders Association appeal.
- b. They foresee no conflicts with other marine users in the Bay.
- c. They state that shellfish aquaculture as an extensive form of aquaculture requires no inputs in terms of food or other substances and they also claim that the Marine Institute found no environmental impacts of their proposed development during their assessment.
- d. They state that issues relating to the public consultation should be referred to the AFMD.
- e. They suggest the issues raised regarding the inadequacy of the AA should be referred to the Marine Institute
- f. They claim that oyster aquaculture will not pose a risk to sea trout populations in rivers discharging into Ballyness Bay
- g. They reject the assertion that the Site is unsuitable for oyster culture and claim that the substrate in that part of the Bay is stable.
- h. They claim that the items called for under the heading “facilities for packing, storing and transportation” in the Save Ballyness Bay SAC Action Group appeal are already covered in a standard aquaculture licence and that DAFM monitors aquaculture sites to ensure compliance.

In response to the submission by Coiste Glan & Glas an Fhál Carraigh agus Cósta Glan agus Glas an Fhál Carraigh, where the issues raised have not already been covered by their earlier responses, they state that:

- a. The proposed development will not impact on the existing walking route and will only be visible at low tide.
- b. DAFM is responsible for monitoring aquaculture sites to ensure compliance with licence conditions regarding waste disposal and site management. They also note many clean cost groups collaborate with local aquaculture and they hope a similar arrangement could be made in Ballyness Bay
- c. They acknowledge an error on their behalf for answering yes to a query asking if the site was within a Designated Shellfish Area. They are of the opinion that their site is of a suitable distance from the sewage outfall mentioned and also point out that they have a responsibility for making sure anything produced by them is fit for human consumption and that the SFPA or Irish Water have not objected to this proposed development.
- d. They claim the Site is a sandy area free of rocks and seaweed and therefore cannot impact on local seaweed harvesting traditions.

- e. They dispute that there is a requirement to be associated with the locality to be granted an aquaculture licence, although they do claim family connections in the area.
 - f. They claim their proposed development will not negatively impact on any known heritage features in the area.
3. Joseph Coll submitted responses to the appellants on a number of issues relating to his sites T12/407B, T12/500A, T12/502A, T12/514A, T12/515A and T12/516A which correspond to appeals AP3/2020, AP11/2020, AP12/2020, AP14/2020, AP15/2020 and AP16/1&2/2020.

In response to the submissions by Save Ballyness Bay SAC Action Group in relation to appeals AP3/2020, AP11/2020, AP12/2020, AP14/2020, AP15/2020 and AP16/2/2020, the applicant states that:

- a. He holds that public consultation was adequate and as directed by DAFM and that the paper the notice was advertised in is sold in five local shops.
- b. The access route to his sites is from a council-owned road which is a right of way.
- c. He claims neither otters nor seals will be disturbed by the proposed development. He also claims the maps of seal haul outs submitted by the appellant are falsified.
- d. He claims the proposed developments will have no negative impacts on Natura 2000 sites or habitats.
- e. He refers to the fact that triploids are used in aquaculture as they do not reproduce.
- f. He claims the proposed developments will have no impacts on tourism, and suggests aquaculture previously had a positive impact on tourism in the area.
- g. He disputes the claim that there is fishing in the Bay.
- h. He disputes the claim that oyster farming will devalue the scenic value of the area and also refers to the previous unlicensed oyster aquaculture in the Bay which he claims did not cause any ecological or environmental damage and which he claims the majority of local people didn't know aquaculture was occurring in the Bay.
- i. He refers to the potential for oyster aquaculture to provide employment in the area.

In response to the submissions by Joe Friel in relation to appeal AP16/1/2020, the applicant states that:

- a. The proposed development would not be clearly visible from the N56 as claimed by the appellant as it is at a distance of approximately 1 km from the point indicated by the appellant.
- b. He claims the land referenced by the appellant does not infringe on the planned access route to his proposed site.

- c. He disputes the claim that there are seal haul outs in the area of this proposed development.
 - d. He disputes the appellants claim that there will be aquaculture activity at the Site at nighttime or that large machinery will be required on site, so noise disturbance will therefore be minimal.
 - e. He disputes the claim that the proposed development will negatively impact on local tourism.
 - f. He disputes the claim that the proposed development will disrupt habits, devalue the scenic area or negatively impact on wildlife.
4. Edward and Paul O'Brien submitted responses to the appellants on a number of issues relating to their sites T12/409A and T12/409B which correspond to appeals AP4/1&2/2020 and AP5/2020.

In response to the submission by John O'Boyle relating to AP4/1/2020, they stated that the appellant is incorrect in his assertion that they will be using the road he marked on his map and traversing his lands. They provide their own map with the relevant roads marked.

In response to the submissions by Save Ballyness Bay SAC Action Group in relation to appeals AP4/2/2020 and AP5/2020, they state that:

- a. They were following DAFM's instructions when they published the notice in the local newspaper.
- b. They dispute the claim by the appellants that the local paper used for publishing the notification of the aquaculture licence was not widely read in the area.
- c. They dispute the appellants claim that the documents were only available for viewing for 72 hours over the course of a month in the local garda stations. They also point out the documents were available on DAFM's website.
- d. They dispute the appellants claim regarding the claim that some local people would be more confident reading in Irish and it was putting them at a disadvantage not to publish the notice in Irish as well as English.
- e. They claim the maps produced by the appellants showing multiple seal haul out sides in Ballyness Bay are falsified.
- f. They highlight an apparent misunderstanding of the appellant as regards diploid and triploid oysters, which is that triploid oysters are mostly incapable of reproducing.
- g. They dispute the appellants claim that the access route used will hinder public access and cause degradation of dune habitat as their access route is from their own privately owned land directly to the foreshore.

- h. They use the existence of previous unlicensed aquaculture operations in the Bay as evidence to claim that aquaculture can exist in Ballyness Bay, and people may not even be aware of it as it has so little impact.
- i. They dispute the appellants claim that a fishery for sea trout exists in the Bay.
- j. They question the appellants integrity and claim they were spreading false information locally.

1.9 Consolidation of Appeals

The Board consolidated these appeals on the 25 November 2021. Therefore, appeals AP3/2020 to AP16/2020 are considered together as is relevant for the technical advisor's assessment and this report. However, the technical advisor's opinion as given in the conclusion of this report deals with each appeal individually.

2.0 Minister's file

Details of the files received by ALAB from the Minister requested under Section 43 are listed here. Copies of the following items were received:

- Application forms, maps, and drawings
- Submissions from Statutory and Technical consultations and applicant submissions in response to these
- Submissions from the Aquaculture and Foreshore Management Division to the Minister
- Appropriate Assessment Report for Aquaculture Activities in Ballyness Bay prepared by the Marine Institute, dated February 2019
- Notification of Minister's decision to the applicant
- Location map of the surrounding area including
 - Refused Sites
 - Sites currently under appeal

3.0 Context of the Area

3.1 Site Description

3.1.1 Site Location

The proposed developments are located in Ballyness Bay, which is situated in north-west Donegal adjacent to the towns of Gortahork and Falcarragh (Figure 1). Ballyness Bay is a large and very shallow estuarine complex, with extensive areas of sandflats which are exposed at low tide (Figure 2). The Dooley Peninsula stretches across the mouth of this well-sheltered bay, leaving only a narrow strait to the open sea. The Sites under appeal are

located across the extent of the Bay, with a concentration on the north-west side, close to the Dooney Peninsula.



Figure 1: showing the location of Ballyness Bay in north-west Donegal. Image courtesy of Google Maps 2022.

3.1.2 Physical description

The underlying geology of the area is mostly pelites, with some smaller areas of limestone and quartzite. This is mostly covered by windblown sand and peat. The Tullybegley River, which supports a population of salmon and trout, drains into the Bay, along with the Glenna River and a number of smaller streams. The Bay itself drains almost fully at low tide, leaving large areas of exposed sand flats. It is a particularly open, flat bay with a clear line of sight around the bay from a number of points (Figures 3 – 6).



Figure 2: showing Ballyness Bay at low tide. Image courtesy of Google Maps 2022.



Figure 3: view from Dooley Peninsula, looking north-east across Ballyness Bay



Figure 4: view from one of the proposed sites, looking north east across Ballyness Bay



Figure 5: view from the Western shore looking East across Ballyness Bay



Figure 6: view from Ballyness Pier looking West across Ballyness Bay

3.1.3 Local Population

The area immediately surrounding the Bay is sparsely populated and rural. The main population centres in the area surrounding Ballyness Bay are Falcarragh and Gortahork. The Gortahork electoral division had a total population of 1693 according to the 2022 Census (CSO, 2022). The population of the surrounding area expands during the summer with an influx of tourists.

3.1.4 Land Use

The bay is mostly surrounded by agricultural land used at a low intensity. Agricultural activity in the area involves the grazing of sheep and cattle. According to the Agricultural Census of 2020 (CSO, 2020), 1,436 hectares are farmed in the Gortahork electoral area, all under grassland for grazing.

3.1.5 Meteorological Conditions

Malin Head is the nearest weather station, approx. 50km North-East of Ballyness and the area has a temperate maritime climate. It has a Long-Term average (LTA) of 1076 mm of rain on average per month, and 226 days of rain a year, so is considered a wet part of Ireland. As can be seen from Figure 7 below, the temperature is mild throughout the year normally ranging between an average of 2.3 and 16 degrees (www.met.ie).

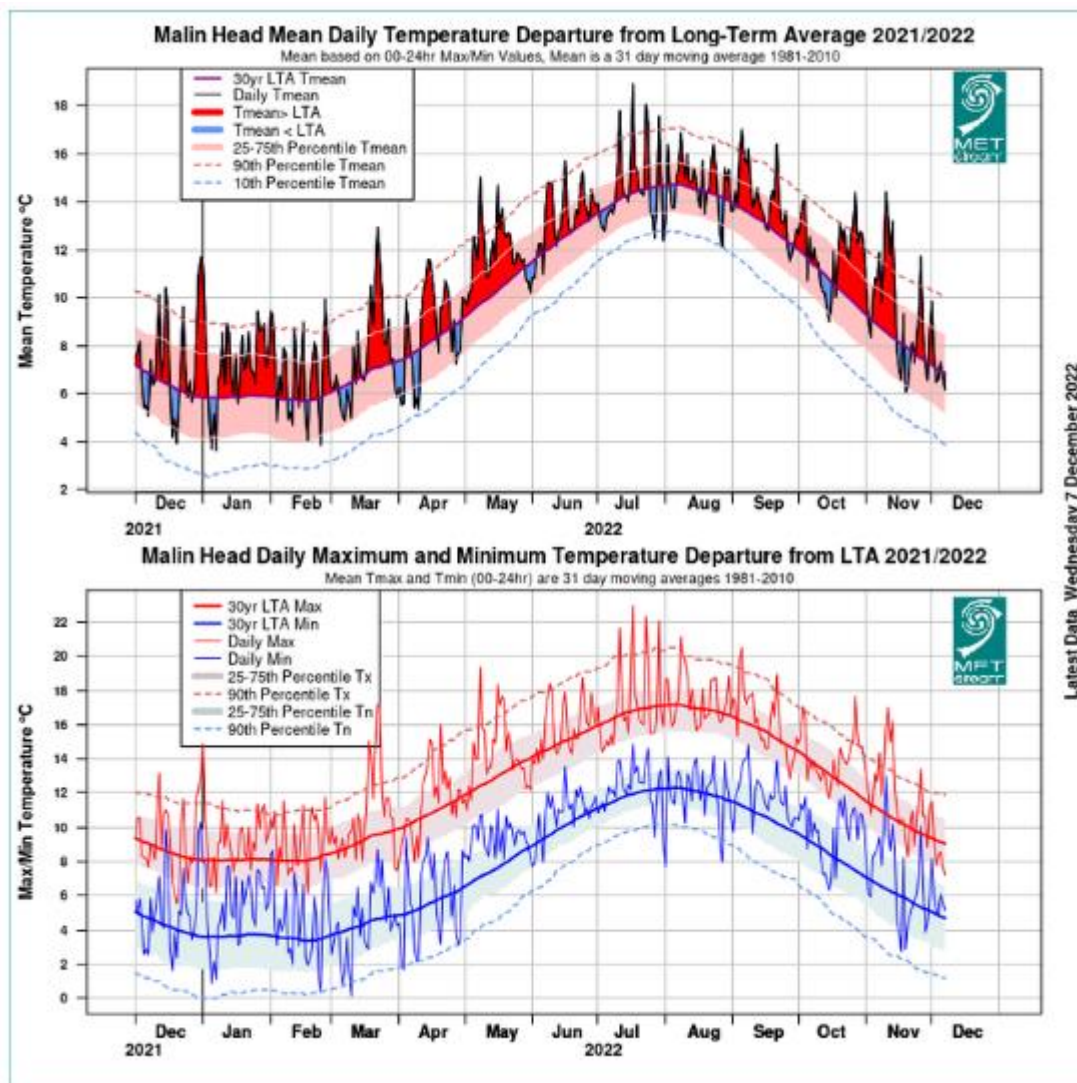


Figure 7: Average monthly temperatures for Malin Head Weather Station (www.met.ie)

3.1.6 Freshwater influence and water quality

The Tullybegley River and the Glenna River are the two main freshwater influences into Ballyness Bay. The Tullybegley River had a “Poor” monitored status under the Water Framework Directive 2016-2021 cycle. The Glenna River also had a “Poor” monitored status for the same monitoring period. Both rivers are considered “At risk” under the same WFD monitoring cycle assessment. Two smaller freshwater influences, the Owenwillin and the

Owen have a “Good” status. Ballyness Bay itself had a “Good” status for the same monitoring period, as can be seen from Figure 8 below.



Figure 8: Map showing water quality status as recorded under the Water Framework Directive 2016-2021 cycle. From epamaps.ie

3.1.7 Wastewater Treatment

There is one primary treatment plant discharging into Ballyness Bay, at Falcarragh. A tertiary treatment system to replace this is due to begin construction in 2024 (irishwater.ie). The Falcarragh plant is currently overloaded, so sewage may be a concern in terms of water quality and given the nature of Bay as it dries out at low tide. This problem is increased

during the summer months with increased population. Gortahork has no treatment plant, so waste is discharged directly into the bay or into individual private septic tank systems.

3.2 Resource Users

3.2.1 Aquaculture Activity

Currently there is no aquaculture activity licenced in Ballyness Bay. Previously, there were two licenced operators in the Bay, farming Pacific oysters using the bag and trestle method, but the last of these licences lapsed in 1999. Anecdotally, there was some unlicensed activity in the bay, in the form of oyster farming until the mid-2000's. The Bay is currently not a Designated Shellfish Area nor a Classified Bivalve Mollusc Production Area.

The proposed developments consist of Pacific oyster aquaculture using bags and trestles and Manila clam aquaculture on wooden frames under nets. There were 18 aquaculture licences submitted to DAFM, of which 14 were granted (see Figure 9, green areas). All 14 of the granted sites have been appealed to ALAB.

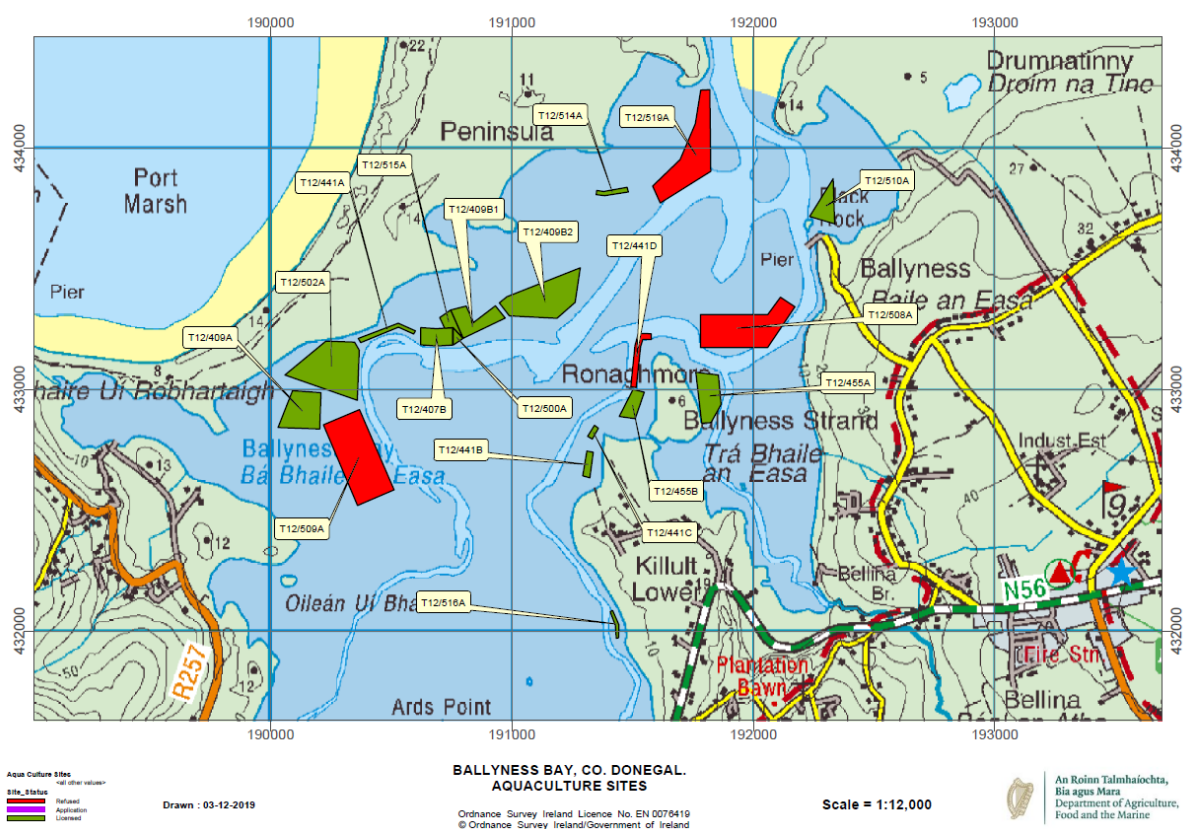


Figure 9: showing aquaculture licence sites within Ballyness Bay. Green indicates a site licenced by DAFM; red indicates a refusal by DAFM. All green sites are currently under appeal to ALAB. Image courtesy of DAFM.

3.2.2 Angling Activity

Angling for salmon and sea trout occurs in Ballyness Bay from the shore, in the water channels that remain at low tide. The Tullybegley River is also fished for salmon and trout. There is no other type of angling in the Bay.

3.2.3 Tourism and Leisure users

The Border region (Donegal/Cavan/Leitrim/Monaghan/Sligo) had over 2.2 million tourists (from overseas and domestic) visit in 2019 (Fáilte Ireland, 2021). Ballyness Bay and the local area are popular with tourists during the summer months attracted to its scenery, walking routes the availability of water sports, access to offshore islands such as Tory Island from the nearby Magheroarty Pier and its location along the Wild Atlantic Way.

3.2.4 Commercial Inshore Fishing Activity

No commercial inshore fishing occurs in Ballyness Bay.

3.2.5 Industrial/Agricultural Activity

There is no heavy industry in the region. Agriculture consists predominately of grazing for sheep and cattle as described in 3.1.4 above.

3.3 Statutory Status

3.3.1 Nature Conservation Designations

Nature Conservation Designations (Natura 2000 sites) are sites designated under the Habitats and Birds Directives. There are two types: Special Areas of Conservation (SAC, habitats and species) and Special Protection Areas (SPA, birds).

Special Areas of Conservation are prime wildlife conservation areas in the country, considered to be important on a European as well as Irish level. The Habitats Directive lists certain habitats and species that must be protected within SACs. The proposed developments are in the Ballyness Bay SAC (Site Code: 001090) and Horn Head and Rinclevan SAC (Site Code: 000147), Gweedore Bay and Island SAC (Site Code: 001141) and Tory island Coast SAC (Site Code: 002259) is also nearby (Figure 10).

Special Protected Areas are bird conservation areas in the country, also considered to be important on a national and European level. The Falcarragh to Meenlaragh SPA (Site Code: 004149) is a Special Protected Area and abuts the proposed Site area. Also nearby are the Inishbofin, Inishdoeey and Inishbeg SPA (Site Code: 004083) and the Tory island SPA (Site Code: 004073) (Figure 10).

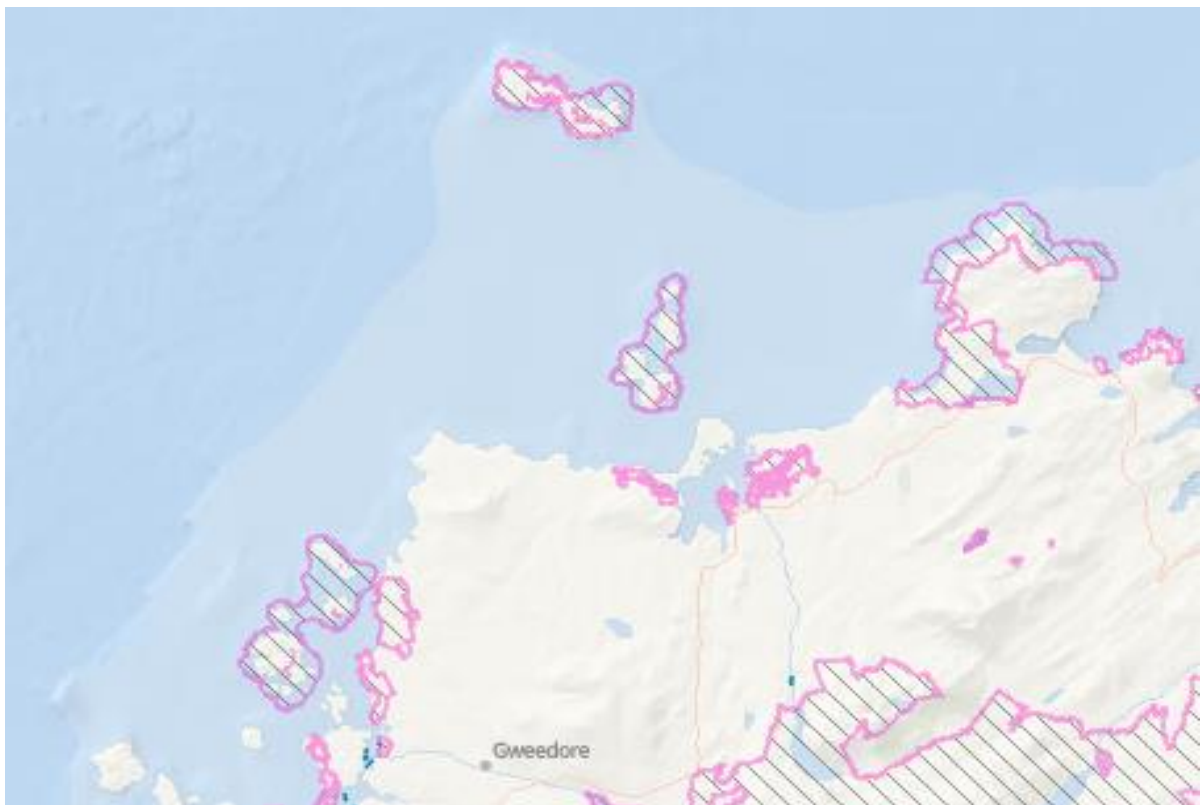
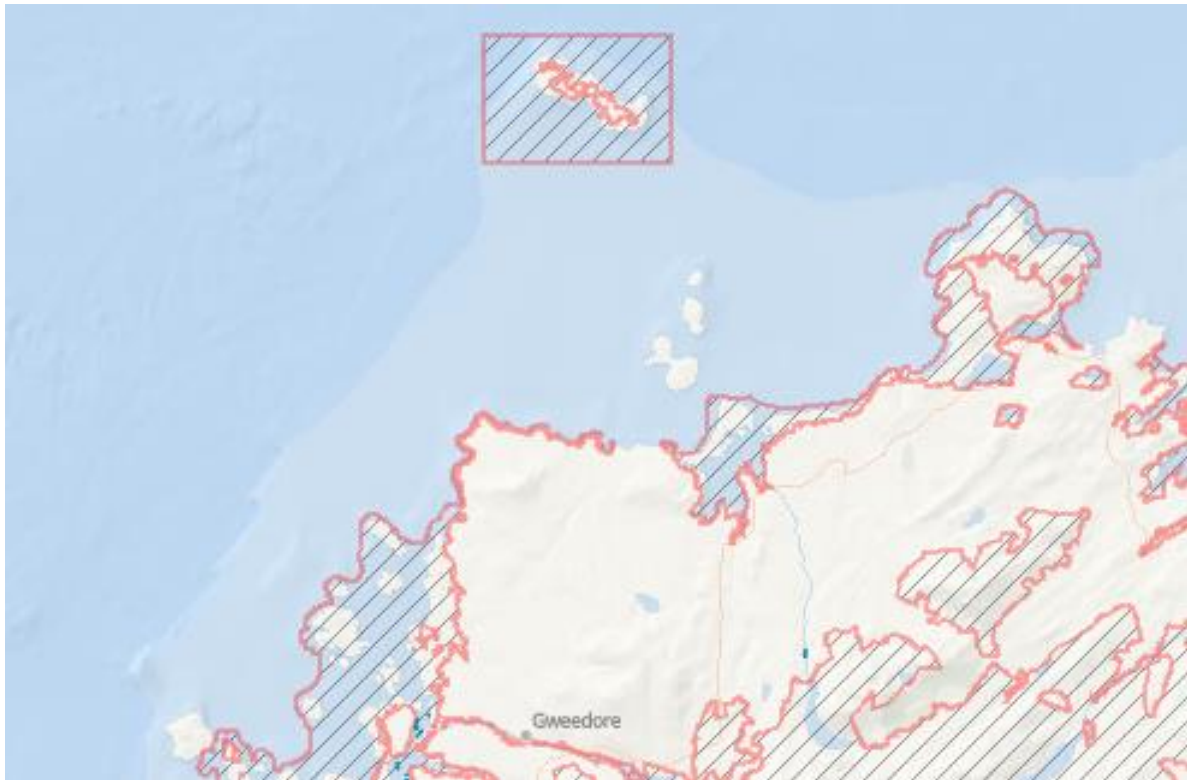


Figure 10 showing SACs (red) and SPAs (pink) in the area directly surrounding Ballyness Bay, taken from EPA Maps.

The Marine Institute on the behalf of the Department of Agriculture, Food and the Marine (DAFM) produced an Appropriate Assessment Report for Aquaculture Activity at in Ballyness

Bay in February 2019 which details the conservation interests of the SACs and SPAs mentioned above. A NIS report prepared by Aquafact was prepared by a number of the Applicants and submitted to ALAB in January 2024. The ALAB technical Advisor prepared a supplemental AA report in March 2024. All these reports are available on the ALAB website.

3.3.2 Protected Species

There are a range of protected species recorded in the Ballyness Bay area, based on records from Biodiversity Ireland in the last twenty years, including insects, birds, marine mammals and flowering plants (<https://maps.biodiversityireland.ie/Map> [Accessed on 09/12/2022]). Animals with a potential overlap with the marine environment, or a presence within the marine environment are listed in the following tables.

Table 1 Protected Bird Species Recorded around Ballyness Bay in the last 20 Years.

Species name	Record count	Date of last record	Designation
Great Northern Diver (<i>Gavia immer</i>)	8	31/03/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species
Peregrine Falcon (<i>Falco peregrinus</i>)	5	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species
European Golden Plover (<i>Pluvialis apricaria</i>)	6	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Annex II, Section II Bird Species and Annex III, Section III Bird Species, Threatened Species: Birds of Conservation Concern - Red List
Greater White-fronted Goose (<i>Anser albifrons</i>)	4	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species Annex II, Section II Bird Species and Annex III, Section III Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Bar-tailed Godwit (<i>Limosa lapponica</i>)	7	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Black-throated Diver (<i>Gavia arctica</i>)	2	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List

Corn Crake (Crex crex)	11	24/05/2021	Protected Species: Wildlife Acts EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Red List
Dunlin (Calidris alpina)	12	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Merlin (Falco columbarius)	6	31/12/2011	Protected Species: Wildlife Acts, Protected Species: EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Red-billed Cough (Pyrrhocorax pyrrhocorax)	22	23/06/2021	Protected Species: Wildlife Acts EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Red-throated Diver (Gavia stellata)	6	31/03/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Sandwich Tern (Sterna sandvicensis)	7	23/06/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Whooper Swan (Cygnus cygnus)	8	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Mallard (Anas platyrhynchos)	26	22/04/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section I Bird Species and Annex III, Section I Bird Species
Common Coot (Fulica atra)	9	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section I Bird Species and Annex III, Section II Bird Species, Threatened Species: Birds of Conservation Concern- Amber List
Common Pochard (Aythya ferina)	7	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section I Bird Species and Annex III, Section II Bird Species, Threatened Species: Birds of Conservation Concern - Amber List

Eurasian Teal (<i>Anas crecca</i>)	9	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section I Bird Species and Annex III, Section II Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Tufted Duck (<i>Aythya fuligula</i>)	11	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section I Bird Species and Annex III, Section II Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Gadwall (<i>Anas strepera</i>)	2	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section I Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Long-tailed Duck (<i>Clangula hyemalis</i>)	2	31/12/2011	Protected Species: Wildlife Acts EU Birds Directive Annex II, Section II Bird Species
Red-breasted Merganser (<i>Mergus serrator</i>)	17	31/03/2021	Protected Species: Wildlife Acts, EU Birds Directive >> Annex II, Section II Bird Species
Common Eider (<i>Somateria mollissima</i>)	22	09/07/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section II Bird Species and Annex III, Section II Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Greater Scaup (<i>Aythya marila</i>)	2	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section II Bird Species and Annex III, Section III Bird Species, Threatened Species: Birds of Conservation Concern - Amber List
Common Goldeneye (<i>Bucephala clangula</i>)	4	31/12/2011	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section II Bird Species, Threatened Species: Birds of Conservation Concern-Amber List
Eurasian Curlew (<i>Numenius arquata</i>)	25	31/03/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section II Bird Species, Threatened Species: Birds of Conservation Concern - Red List
Northern Lapwing (<i>Vanellus vanellus</i>)	22	22/04/2021	Protected Species: Wildlife Acts, EU Birds Directive Annex II, Section II Bird Species, Threatened Species: Birds of Conservation Concern - Red List
Barnacle Goose (<i>Branta leucopsis</i>)	5	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List

Black Guillemot (<i>Cephus grylle</i>)	4	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Brent Goose (<i>Branta bernicla</i>)	11	31/03/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Common Guillemot (<i>Uria aalge</i>)	6	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: - Amber List
Common Shelduck (<i>Tadorna tadorna</i>)	13	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Eurasian Oystercatcher (<i>Haematopus ostralegus</i>)	24	23/06/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
European Shag (<i>Phalacrocorax aristotelis</i>)	16	14/03/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Great Black-backed Gull (<i>Larus marinus</i>)	20	31/03/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Great Cormorant (<i>Phalacrocorax carbo</i>)	19	31/03/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Great Crested Grebe (<i>Podiceps cristatus</i>)	2	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Grey Plover (<i>Pluvialis squatarola</i>)	4	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Lesser Black-backed Gull (<i>Larus fuscus</i>)	17	22/04/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Mew Gull (<i>Larus canus</i>)	28	14/03/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Mute Swan (<i>Cygnus olor</i>)	14	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List

Northern Gannet (Morus bassanus)	17	22/04/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Razorbill (Alca torda)	5	22/04/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Ringed Plover (Charadrius hiaticula)	22	23/06/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Sand Martin (Riparia riparia)	9	24/05/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Water Rail (Rallus aquaticus)	3	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Amber List
Black-headed Gull (Larus ridibundus)	16	23/06/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Red List
Black-necked Grebe (Podiceps nigricollis)	2	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Red List
Common Redshank (Tringa totanus)	12	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Red List
Herring Gull (Larus argentatus)	27	22/04/2021	Protected Species: Wildlife Acts, Threatened Species: Birds of Conservation Concern - Red List
Black-legged Kittiwake (Rissa tridactyla)	10	31/12/2011	Protected Species: Wildlife Acts, Threatened Species: OSPAR Convention, Birds of Conservation Concern - Amber List

Table 2 Protected Marine mammal Species Recorded around Ballyness Bay in the last 20 Years.

Species name	Record count	Date of last record	Designation
Bottle-nosed Dolphin (Tursiops truncatus)	1	18/07/2018	Protected Species: EU Habitats Directive Annex II Annex IV, Protected Species: Wildlife Acts
Common Porpoise (Phocoena phocoena)	10	17/09/2020	Protected Species: EU Habitats Directive Annex II and Annex IV, Wildlife Acts, Threatened Species: OSPAR Convention

Common Seal (Phoca vitulina)	9	17/10/2021	Protected Species: EU Habitats Directive Annex II and Annex V, Wildlife Acts
Grey Seal (Halichoerus grypus)	1	15/08/2011	Protected Species: EU Habitats Directive Annex II and Annex V, Wildlife Acts
Atlantic White-sided Dolphin (Lagenorhynchus acutus)	1	24/01/2007	Protected Species: EU Habitats Directive Annex IV, Wildlife Acts
Common Dolphin (Delphinus delphis)	10	05/10/2020	Protected Species: EU Habitats Directive Annex IV, Wildlife Acts
Long-finned Pilot Whale (Globicephala melas)	2	14/03/2020	Protected Species: EU Habitats Directive Annex IV, Wildlife Acts
Minke Whale (Balaenoptera acutorostrata)	1	29/06/2006	Protected Species: EU Habitats Directive Annex IV, Wildlife Acts
Sperm Whale (Physeter macrocephalus)	2	25/03/2019	Protected Species: EU Habitats Directive Annex IV, Wildlife Acts
Striped Dolphin (Stenella coeruleoalba)	2	28/08/2020	Protected Species: EU Habitats Directive Annex IV, Wildlife Acts

3.3.3 Statutory Plans

Ballyness Bay is not the subject of a statutory plan in its own right but is covered under the most recent County Development Plan for Donegal, the Donegal County Development Plan 2018 – 2024. The plan has the following relevant objectives:

The Marine Resource and Coastal Management Objectives

MRCM-O-1: To maximise the social and economic potential of Donegal's marine sector by: Supporting the fishing and seafood sector by maintaining and improving harbour infrastructure (in accordance with the Councils Marine Services Capital Investment Programme) and facilitating seafood processing industries and ancillary service developments.

- Consolidating and strengthening our Marine Leisure sector by, protecting the recreational and environmental quality of our coastal areas, maintaining and upgrading existing and providing new marine access infrastructure (in accordance with the Councils Marine Services Capital Investment Programme), facilitating ancillary onshore marine leisure developments, and marketing our marine tourism product.

- Supporting the offshore primary production sector of the aquaculture industry, subject to adequate environmental assessments and safeguards being provided to the satisfaction of the Council and to the avoidance of the development giving rise to an overbearing visual impact on the locality in which it is proposed.

MRCM-O-3: To manage our coastal environment in a sustainable manner by:

- Managing development in a manner which protects sensitive coastal environments (e.g. dune environments) and undertaking coastal zone management projects.
- Ensuring that new marine infrastructure developments (e.g. pier, breakwaters) are located, sited and designed in a manner which has minimal impact on natural Coastal Geomorphological process.

Policy

MRCM-P-10: It is a policy of the Council to ensure that development proposals do not adversely compromise the recreational amenity and environmental quality of coastal areas including Flag Beaches, Natura 2000 sites and areas of Especially High Scenic Amenity.

Scenic Amenity in the County Donegal Development Plan

In the current Donegal County Development Plan the aquaculture site is proximate to Areas of High and Especially High Scenic Amenity. As outlined in the development plan each of the scenic amenity areas are classed as follows.

Areas of Especially High Scenic Amenity (EHSA)

Areas of Especially High Scenic Amenity are sublime natural landscapes of the highest quality that are synonymous with the identity of County Donegal. These areas have extremely limited capacity to assimilate additional development.

Areas of High Scenic Amenity (HSA)

Areas of High Scenic Amenity are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.

3.3.4 Water Quality Status

Ballyness Bay is recorded as having a “Good” status under the 2016-2021 Water Framework Directive reporting cycle and is deemed not at risk of further deterioration during the current cycle. This designation is based on extrapolated data. Freshwater influences into the Bay are rated as having a “Poor” status and being at risk of deterioration for the two main inflows and having a “Good” status and not being at risk of deterioration for the other two

smaller inflows. and under the current WFD cycle, see Section 3.1.5 for more details (www.gis.epa.ie).

3.3.5 Bathing Water Quality

Ballyness Beach is not a recorded swimming area and bathing water quality is not recorded at this site. Bathing water quality is recorded at the nearby Magheraroarty and Drumnatinny Beaches and was recorded as excellent for both beaches from 2020 to 2023 (beaches.ie).

3.3.6 Shellfish Designated Areas

The nearest Designated Shellfish Waters are Sheephaven to the north and Gweedore to the south. Ballyness Bay is not a Designated Shellfish Water under SI No 268 of 2006 and (Amendments), European Communities (Quality of Shellfish Waters) Regulations.

3.3.7 Shellfish Classified Areas

The nearest Bivalve Mollusc Classified Production Areas managed by the SFPA are Mulroy Bay to the north and Gweedore to the south. Ballyness Bay has no area designated as a Bivalve Mollusc Classified Production Area.

3.4 Environmental/Ecological Data

Other Environmental and Ecological issues to note are the potential risk to Ballyness Bay if the dune system at Dooley is breached and the gaps found in the Appropriate Assessment (AA) Report and Conclusion Statement.

The Dooley Peninsula is made up of a complex of sand dunes, making it vulnerable to erosion. The narrow portion of the Peninsula at Magheroarty Pier is particularly threatened due to vehicular and foot traffic along a track leading onto the Peninsula. Further degradation of the dune complex in this area could lead to more severe erosion and occasional, or regular breaching of the sea into Ballyness Bay at this point. A risk only likely to be increased in light of climate change and the probability of more regular storm events.

The issues relating to the Marine Institute AA Report and DAFM Conclusion Statement are discussed in Section 5 below, along with the NIS produced by the applicants and the ALAB supplemental AA report.

The proposed developments have the potential to be disturbing to the habitats affected in the technical advisor's opinion, contrary to the conclusion drawn in the AA Report. The relevant habitat types are listed in Table 3 below. However, as the percentage disturbance to the habitats is below 15% (NPWS Guidance, 2009, Table 4), it is not considered a

significant level of disturbance to the overall habitat within the SAC and therefore will not impact on the conservation objective of the Site, which is to maintain favourable conservation condition for these habitats.

Table 3: Annex I Habitats in Ballyness Bay (from AA Report, 2019)

Community Type	Annex I Habitats	
	Estuaries (1130)	Mudflats and sandflats not covered by seawater at low tide (1140)
Coarse sediment to sandy mud with oligochaetes and polychaetes community complex	✓	✓
Mobile sand community complex	✓	✓

Table 4: showing percentage disturbance to each Annex I habitat type (from AA Report, 2009)

Licence Status	Culture Species	Qualifying Interest 1140 (688.5 ha)	
		Community Type	
		Coarse sediment to sandy mud with oligochaetes and polychaetes community complex (120.9ha)	Mobile sand community complex (567.6ha)
		Overlap % (Overlap ha)	Overlap % (Overlap ha)
Application	Oyster	3.77% (4.56ha)	5.1% (28.7ha)
Application	Clam	-	1.6% (9ha)
Application	Oyster and Clam	0.28% (0.35ha)	1.37% (7.75ha)
Site Access Routes		1.2% (1.43ha)	0.59% (3.33ha)
Total		5.25% (6.34ha)	8.66% (48.78ha)

3.5 Man-made heritage

There are no shipwrecks in the immediate vicinity of Ballyness Bay and the only archeological features of note are the remains of two hill forts which overlook the Bay (www.heritagemaps.ie, accessed on 09/12/2022).

4.0 Environmental Impact Assessment.

This application was submitted in 2010 so the 2011 version of the EIA Directive applies in this case, rather than the more recent 2014 version, adopted in 2017.

The Board's technical advisor considered the projects proposed in the Applications for Aquaculture Licences under the requirements of the Aquaculture Appeals (Environmental

Impact Assessment) Regulations 2012 and the EIA Directive (2011/92/EU) and concluded that, under the requirements of the legislation as they are extensive aquaculture, they are exempt developments. Therefore, they were not likely to have significant effects on the environment by virtue of their size, nature or location and so do not require a screening report or an environmental impact assessment report.

Therefore, the Technical Advisor is satisfied that the direct and indirect effects of the proposed activity at the Sites on the following factors:

- (a) population and human health.
- (b) biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives.
- (c) land, soil, water, air and climate.
- (d) material assets, cultural heritage and the landscape; and
- (e) the interaction between the factors referred to in points (a) to (d)

will not have significant effects on the environment, including the factors listed in (a) to (d) by virtue of, inter alia, its nature, size or location.

5.0 Appropriate Assessment.

The Marine Institute on the behalf of the Department of Agriculture, Food and the Marine (DAFM) produced an Appropriate Assessment Report for Aquaculture Activity in Ballyness Bay in February 2019. DAFM produced an AA Conclusion Statement for Aquaculture Activity in Ballyness bay in November 2019. The AA Report only considered Special Protected Area (SPA) sites within 15km of the proposed developments and did not consider the foraging range of Special Conservation Interest (SCI) Species from SPA sites located at a greater distance from the sites. The technical advisor also found that there were remaining areas of concern where questions had not been resolved to the level of beyond reasonable scientific doubt, and outstanding questions were not suitably resolved in the AA Conclusion Statement. These were outstanding questions relating to potential impacts on grey seals, a lack of consideration of angling activities in the Bay and a lack of consideration of in-combination effects.

The Board's technical advisor found that the assessment did not consider all the factors necessary within the Ballyness Bay SAC. Also, the AA Conclusion Statement did not fully resolve issues raised in the AA Report relating to the SACs, meaning there were outstanding questions which had not been resolved to the level of being beyond reasonable scientific doubt, as is required under the legislation.

On review of the Marine Institute's AA report of February 2019, the ALAB technical advisor found additional information was required in a number of areas as outlined above to complete the Appropriate Assessment. A notice was sent to the Marine Institute on 24 March 2023 requesting additional information including:

- 1) an assessment of potential impacts on those SCI species of SPAs in the region whose feeding range overlaps with Ballyness Bay or whose SPA area adjoins the proposed project and access routes.
- 2) an assessment of seal species using Ballyness Bay and potential for disturbance due to the proposed project on protected grey seal populations.
- 3) an assessment of in combination impacts, to include an assessment of the existing salmonid fishery and the other proposed aquaculture projects within the Bay.
- 4) an assessment of the implications of any changes in the area since 2019, and any further information, to ensure that the assessment of the potential impacts of the project is up to date.

This data was not forthcoming from the Marine Institute. A notice was then sent to all applicants notifying them for the need for a supplemental Natura Impact Statement to be carried out. This notice was issued on 4 August 2023. The notice requested the same information as was requested from the Marine Institute (Appendix 2). The NIS report was received by ALAB on 22 January 2024, prepared by Aquafact on behalf of three of the applicants. The ALAB TA prepared a separate supplemental AA report discussing these previous reports the "Appropriate Assessment Supplementary Report", dated the 22 March 2024. The Board also prepared its own AA Conclusion Statement in April 2024.

The main additional finding of the ALAB AA Supplementary report was to enforce a 200m buffer, accompanied by the barrier of a tidal channel between the sand bank identified as a seal haul out site and any proposed aquaculture site. This is shown in Figure 11 below.



Figure 11 showing overlap between some proposed aquaculture sites and a proposed 200m buffer from the sand bank being used as a seal haul out site.

6.0 Section 61 Assessment

Section 61 (a-e) of the Act outlines the matters which the licensing authority shall take account of when an application for or an appeal regarding an aquaculture licence is being considered. This section is used to assess the impact of the proposed aquaculture development under these headings, which are listed in 6.1 – 6.7 below.

6.1 Site Suitability

Section 61 (a) considers the suitability of the site at or in which the aquaculture is proposed to take place. The proposed developments of 14 sites are of various sizes, with a combined total size of approx. 49 ha. The sites are located throughout Ballyness Bay, with the majority on the northern shore, closest to the Dooley Peninsula. The sites are mainly for the cultivation of Pacific oyster, with two sites planning to cultivate Manila clams along with oysters and one site for the cultivation of Manila clam only.

Overall:

Visual impact of the developments on the scenic amenity of the area was raised as a concern in a number of appeals. The combined impact at low tide of 13 areas with oyster trestles in the main body of the bay is not insignificant, especially as the area in which the majority of the sites are located is recognized as an area of Especially High Scenic Amenity. However, the sites will be only visible at low tide.

None of the Sites pose a risk to salmon and sea trout angling in the Bay as all the proposed developments are outside of the channels that remain at low tide, where fishing occurs.

The Sites may pose a disturbance risk to a seal haul-out site located within the Bay, and this in turn may be used by grey seals from the nearby Horn Head and Rinclevan SAC, the AA Stage 2 assessment determined that a distance of at least 200m from the sand bank identified as a seal haul out site and the presence of a tidal channel separating the seal haul out areas and the proposed aquaculture sites would be required to mitigate disturbance effects.

There may also be water quality concerns regarding a local primary discharge point for sewage and the WFD status of the two main rivers that flow into the bay. Also, the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, however, this does not preclude the site from being licenced.

AP3/2020 – T12/407B (Oysters-J Coll)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP4/1&2/2020 – T12/409A (variation – Clams – E&P O’Brien)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for clam culture.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- This site, due to the method of culture being used along with the reduced site size licenced by the Minister, will not have a visual impact or pose a risk to recreational users when the tide covers the site.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP5/2020 – T12/409B1&2 (variation – Clams and Oysters – E&P O’Brien)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the sites are suitable for clam culture and trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.

- Although the sites are not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- This sites, partially due to the reduced site size licenced by the Minister (resulting of the splitting of the original site into two smaller sites), will not have a visual impact or pose a risk to recreational users when the tide covers the site.
- The area used by the sites, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site T12/409B1 is a suitable distance from the known seal haul-out site identified in the bay.

The sites are **unsuitable** for the proposed development for the following reasons:

- A portion of Site T12/409B2 is not a suitable distance from the known seal haul-out site identified in the bay. A variation licence granting a smaller site size would be required here if the licence were to be granted.
- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP6/2020 – T12/441A (Oysters and clams – A McCaffrey)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.

- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP7/2020 – T12/441B (Oysters – A McCaffrey)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- There were no issues in relation to this site and the proposed access route.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP8/2020 – T12/441C (Oysters – A McCaffrey)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- There were no issues in relation to this site and the proposed access route.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.

- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP9/2020 – T12/455A (Oysters – S O'Donnell)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The site is just outside 200m of a known seal haul out site and is therefore considered unlikely to cause a disturbance.

The site is unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be greater at this Site than at others as it is closer to a road. There will also be visual impacts for recreational users at low tide due to the flat, open nature of the bay. However, this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP10/2020 – T12/455B (Oysters – S O'Donnell)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The site is just outside 200m of a known seal haul out site and is therefore considered unlikely to cause a disturbance.

The site is unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be lesser at this Site than at others as it is farther from a road. There will also be visual impacts for recreational users at

low tide due to the flat, open nature of the bay. However, this is not considered significant.

- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP11/2020 – T12/500A (Oysters – J Coll)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP12/2020 – T12/502A (Oysters – J Coll)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP13/1,2,3/2020 - T12/510A (Oysters - Tully shellfish)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.

The site is **unsuitable** for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be greater at this Site than at others as it is closer to a road. There will also be visual impacts for recreational users at low tide due to the flat, open nature of the bay.
- **The site is within 200m of a known seal haul out site and is therefore considered likely to cause a disturbance.**

AP14/2020 - T12/514A (Oysters – J Coll)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.

The site is **unsuitable** for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be greater at this Site than at others as it is closer to a road. There will also be visual impacts for recreational users at low tide due to the flat, open nature of the bay.

- **The site is within 200m of a known seal haul out site and is therefore considered likely to cause a disturbance.**

AP15/2020 - T12/515A (Oysters – J Coll)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

AP16/1&2/2020 - T12/516A (Oysters – J Coll)

The site is suitable for the proposed development for the following reasons:

- There are no objections from a technical perspective as the site is suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
- An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
- Although the site is not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
- There were no issues in relation to this site and the proposed access route.
- The area used by the site, when combined with all other proposed aquaculture sites, do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
- The Site is a suitable distance from the known seal haul-out site identified in the bay.

The site is potentially unsuitable for the proposed development for the following reasons:

- Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
- Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide.

6.2 Other uses

Section 61 (b) takes account of other beneficial uses, both in existence or future in the area and / or waters of the proposed site.

Overall:

Other users of the Ballyness Bay area include recreational anglers, walkers, tourists and people using the area for water sports. The MED have ensured there is sufficient spacing between trestles to accommodate small boat users, and walkers at low tide. However, water sports users would still likely be impeded by these proposed developments. Kayakers and windsurfers use Ballyness Bay and there would potentially be a risk to these users, especially as the tide recedes and trestles are exposed. However, the technical advisor would recommend any Sites that are licenced are properly marked following the recommendations of the Commissioner for Irish Lights, as is standard.

Fishing activity in the Bay is limited to recreational angling for salmon and sea trout which occurs in the channels around low tide, so this development will not impede this. There is no commercial fishing activity within the Bay. Seaweed harvesting in the Bay will not be impacted by the proposed development as it is in sandy area with no seaweed cover.

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed developments given their location in the Bay and the use of proper marking systems.

AP3/2020 – T12/407B

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP4/1&2/2020 – T12/409A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP5/2020 – T12/409B

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP6/2020 – T12/441A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP7/2020 – T12/441B

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP8/2020 – T12/441C

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP9/2020 – T12/455A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP10/2020 – T12/455B

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP11/2020 – T12/500A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP12/2020 – T12/502A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP13/1,2,3/2020 - T12/510A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP14/2020 - T12/514A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP15/2020 - T12/515A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

AP16/1&2/2020 - T12/516A

Other users of Ballyness Bay are unlikely to be significantly negatively affected by the proposed development given its location in the Bay and the use of proper marking systems.

6.3 Statutory Status

Section 61 (c) considers the statutory status of the area under consideration including the provisions of any development plan.

Overall:

As has been discussed above in Section 5, there is the potential for some sites to cause a disturbance to grey seal and harbour seal using a haul out site in the bay. A mitigation of a minimum distance of 200m from the haul out site plus the separation of a tidal channel has been adopted in the ALAB AA Conclusion Statement.

The Donegal County Development Plan supports sustainable aquaculture development, but there may be a conflict between the aims regarding scenic areas, in particular Especially High Value Scenic Areas and the visual impact for recreational users of the proposed developments. However, these developments would only be visible at low tide.

Therefore, some developments will cause a significant negative impact under statutory plans, as has been outlined in greater detail in Section 5 and 6.1 above.

AP3/2020 – T12/407B

The site development will not cause a significant negative impact under the statutory status of the area.

AP4/1&2/2020 – T12/409A

The site development will not cause a significant negative impact under the statutory status of the area.

AP5/2020 – T12/409B

Part of the site development, T12/409B1 will not cause a significant negative impact under the statutory status of the area.

Part of the site development, T12/409B2 will **cause a significant negative impact** under the statutory status of the area as it is too close to a recognised seal haul out site.

AP6/2020 – T12/441A

The site development will not cause a significant negative impact under the statutory status of the area.

AP7/2020 – T12/441B

The site development will not cause a significant negative impact under the statutory status of the area.

AP8/2020 – T12/441C

The site development will not cause a significant negative impact under the statutory status of the area.

AP9/2020 – T12/455A

The site development will not cause a significant negative impact under the statutory status of the area as it is too close to a recognised seal haul out site.

AP10/2020 – T12/455B

The site development will not cause a significant negative impact under the statutory status of the area as it is too close to a recognised seal haul out site.

AP11/2020 – T12/500A

The site development will not cause a significant negative impact under the statutory status of the area.

AP12/2020 – T12/502A

The site development will not cause a significant negative impact under the statutory status of the area.

AP13/1,2,3/2020 - T12/510A

The site development will **cause a significant negative impact** under the statutory status of the area as it is too close to a recognised seal haul out site.

AP14/2020 - T12/514A

The site development will **cause a significant negative impact** under the statutory status of the area as it is too close to a recognised seal haul out site.

AP15/2020 - T12/515A

The site development will not cause a significant negative impact under the statutory status of the area.

AP16/1&2/2020 - T12/516A

The site development will not cause a significant negative impact under the statutory status of the area.

6.4 Economic effects

Section 61 (d) takes into account the likely effect a proposed aquaculture development (or its amendment / revocation) would have on the economy of the area in which the aquaculture is to be located.

Overall:

The Proposed developments will provide employment in a rural community with a lack of employment opportunities. There is concern regarding the potential impact the proposed development would have on the local visual amenity and on a potential knock-on impact on tourist revenue. The technical advisor does not find that this is a significant risk given the relatively low potential visual impact of Pacific oyster and clam aquaculture and the existence of this kind of aquaculture in other scenic areas around Ireland. Some areas promote their locally produced seafood to tourists, showing possible positive future linkages.

The proposed developments are likely to have a positive economic impact on the area.

AP3/2020 – T12/407B

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and three people on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP4/1&2/2020 – T12/409A

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP5/2020 – T12/409B

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP6/2020 – T12/441A

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis and one person on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP7/2020 – T12/441B

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis and one person on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP8/2020 – T12/441C

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis and one person on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP9/2020 – T12/455A

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis and one person on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP10/2020 – T12/455B

The Applicant projects that when in full production the proposed development will employ two people on a full-time basis and one person on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP11/2020 – T12/500A

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and three people on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP12/2020 – T12/502A

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and three people on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP13/1,2,3/2020 - T12/510A

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and one person on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP14/2020 - T12/514A

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and three people on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP15/2020 - T12/515A

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and three people on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

AP16/1&2/2020 - T12/516A

The Applicant projects that when in full production the proposed development will employ one person on a full-time basis and three people on a part-time basis. Therefore, the proposed development is likely to have a small positive impact on the local economy.

6.5 Ecological Effects

Section 61 (e) considers the likely effect that the proposed aquaculture operation would have on wild fisheries, natural habitats and the fauna and flora of the area.

Overall:

As discussed in Section 5 above, the proposed developments have the potential to cause disturbance to seals at a known seal haul-out within the Bay, located close to several of the proposed developments.

In terms of impacts on habitats, while clam and Pacific oyster aquaculture are considered disturbing to the SAC habitat types present in Ballyness Bay, the percentage habitat area to be used by the proposed developments is lower than that which is considered significantly disturbing (NPWS Guidance, 2009).

Assessment of SCI species for SPA sites has not found any evidence of potential significant impact due to these potential developments.

Other protected species

Cetaceans: Although a variety of cetaceans are recorded in the vicinity of the bay, the sightings are very infrequent, and no interactions are predicted. The proposed licensed sites will have **no significant negative** impact on these species.

Otter: Although Otter is recorded in the bay no significant interactions with the proposed developments is predicted. The proposed licensed sites will have **no significant negative** impact on this species.

Other Birds: Several waders species such as Oystercatcher, Lapwing, Sanderling, Bar-tailed Godwit Curlew, Redshank, Greenshank and Turnstone are known to feed in the Bay. These birds may lose foraging area to oyster cultivation and may be disturbed during harvesting and grading operations. The proposed licensed site has some potential for negative impact on these species, but it is unlikely to be significant.

Overall, there is the potential for **some sites to cause a significant negative ecological impact.**

AP3/2020 – T12/407B

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP4/1&2/2020 – T12/409A

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP5/2020 – T12/409B

Part of the site development, T12/409B1 is not considered likely to cause a significant negative impact on the ecological status of the area.

Part of the site development, **T12/409B2 is considered likely to cause a significant negative impact** on the ecological status of the area, due to its proximity to a seal haul out site.

AP6/2020 – T12/441A

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP7/2020 – T12/441B

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP8/2020 – T12/441C

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP9/2020 – T12/455A

The site development is considered not likely to cause a significant negative impact on the ecological status of the area, due to its proximity to a seal haul out site.

AP10/2020 – T12/455B

The site development is considered not likely to cause a significant negative impact on the ecological status of the area, due to its proximity to a seal haul out site.

AP11/2020 – T12/500A

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP12/2020 – T12/502A

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP13/1,2,3/2020 - T12/510A

The site development is considered **likely to cause a significant negative impact** on the ecological status of the area, due to its proximity to a seal haul out site.

AP14/2020 - T12/514A

The site development is considered **likely to cause a significant negative impact** on the ecological status of the area, due to its proximity to a seal haul out site.

AP15/2020 - T12/515A

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

AP16/1&2/2020 - T12/516A

The site development is not considered likely to cause a significant negative impact on the ecological status of the area.

6.6 General Environmental Effects

Section 61 (f) considers any other effects on the environment in general that could occur in the vicinity of the area where the proposed site is to be located.

Overall:

The movement of stock and equipment in and out of the water can encourage the transport of non-native and / or invasive species either through the introduction via seed and /or from boats /vehicles moving between sites. Careful husbandry and management along with adherence to good biosecurity practises can mitigate this risk, however. The appealed sites propose to introduce non-native species, Manila clam and Pacific oyster. However, Manila clam has been farmed in Ireland for several decades and has never been found reproducing in the wild, all juvenile stock comes from hatchery sources. Pacific oysters can reproduce in

the wild in Irish conditions in some cases, however, it has become standard to use triploid oysters (as mostly sterile animals) to mitigate this risk and that would be the technical advisor's advice in this case also.

It is considered that the proposed applications will not pose significant environmental effects within the bay or in the wider area. There are no predicted impacts from pollution sources or changes to hydrological functioning of the sites as a whole. The proposed aquaculture activities are extensive in nature, in that they do not require the addition of feedstuffs or medicinal inputs and rely wholly on the natural resources within the bay.

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed developments on the sites or surrounding areas have been found during the technical review.

AP3/2020 – T12/407B

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP4/1&2/2020 – T12/409A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP5/2020 – T12/409B

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP6/2020 – T12/441A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP7/2020 – T12/441B

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP8/2020 – T12/441C

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP9/2020 – T12/455A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP10/2020 – T12/455B

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP11/2020 – T12/500A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP12/2020 – T12/502A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP13/1,2,3/2020 - T12/510A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP14/2020 - T12/514A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP15/2020 - T12/515A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

AP16/1&2/2020 - T12/516A

Notwithstanding the outcome of Section 5 and Section 6.5 above, no significant environmental effects of the proposed development on the site or surrounding areas have been found during the technical review.

6.7 Effect on man-made heritage

Overall:

There are no predicted impacts on known terrestrial or marine man-made heritage sites located around Ballyness Bay due to the proposed developments. There would be **no effect on the man-made heritage** of value in the area as a result of the proposed operations.

AP3/2020 – T12/407B

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP4/1&2/2020 – T12/409A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP5/2020 – T12/409B

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP6/2020 – T12/441A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP7/2020 – T12/441B

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP8/2020 – T12/441C

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP9/2020 – T12/455A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP10/2020 – T12/455B

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP11/2020 – T12/500A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP12/2020 – T12/502A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP13/1,2,3/2020 - T12/510A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP14/2020 - T12/514A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP15/2020 - T12/515A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

AP16/1&2/2020 - T12/516A

There would be **no effect on the man-made heritage** of value in the area as a result of the proposed development.

6.8 Section 61 Assessment Conclusions

Overall:

There are potential significant negative impacts of some of the proposed developments on site suitability, statutory status and ecological effects. There are also potential issues regarding water quality in the Bay, but this would be an issue for the SFPA and any potentially licenced operators.

AP3/2020 – T12/407B

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP4/1&2/2020 – T12/409A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP5/2020 – T12/409B

Part of this site, T12/409B1, is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

Part of this site, T12/409B2, has the **potential to cause significant negative impacts** in relation to site suitability, statutory status and ecological effects.

AP6/2020 – T12/441A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP7/2020 – T12/441B

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP8/2020 – T12/441C

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP9/2020 – T12/455A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP10/2020 – T12/455B

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP11/2020 – T12/500A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP12/2020 – T12/502A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP13/1,2,3/2020 - T12/510A

This site has the **potential to cause significant negative impacts** in relation to site suitability, statutory status and ecological effects.

AP14/2020 - T12/514A

This site has the **potential to cause significant negative impacts** in relation to site suitability, statutory status and ecological effects.

AP15/2020 - T12/515A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

AP16/1&2/2020 - T12/516A

This site is not likely to cause significant negative impacts under any of the areas assessed for Section 61 of the Fisheries (1997) Act, as amended.

6.9 Confirmation re Section 50 Notices

There are no matters which arise in Section 61 which the Board ought to take into account which have not been raised in the appeal documents, and it is not necessary, in the technical advisors opinion, to give notice in writing to any parties in accordance with section 50 (2) of the 1997 Act.

6.10 Section 46 and Section 47 Notices

Section 46 of the Act provides for the Board to request that a party to the appeal who has already made submissions/observations to the Board make further submission /observations in relation to a matter which has arisen in the course of the appeal.

Section 47 of the Act provides for the Board to request documents, particulars or other information that it deems necessary to enable it to determine an appeal from a party who has made submissions or observations to the Board in relation to the appeal.

A number of letters were issued by the Board under Section 46 or Section 47 of the Act in relation to these appeals, which are outlined in Table 5 below. The notices and their responses can be viewed in full on the ALAB website, www.alab.ie

Table 5 showing notices sent to parties to the appeal requesting additional information.

Appeal Ref	Date of issue/receipt	Document
AP3-16/2020	24 March 2023	S47 to Marine Institute
AP3-16/2020	01 August 2023	S46 Request to NPWS
AP3-16/2020	04 August 2023	NIS Letter to all Applicants
AP3-16/2020	12 February 2024	S46 request to NPWS
AP3-16/2020	08 March 2024	S46 request to AFMD

7.0 Technical Advisor's Evaluation of the Issues in Respect of Appeal and Submissions/Observations Received

AP3/2020	
Appellant: Save Ballyness Bay SAC Action Group	
Appeal issue	Technical Advisors Comment
Ineffective Public Consultation: the appellant claims the Minister was in breach of the Aarhus Convention regarding proper public consultation and that they have made a submission to the Aarhus Convention Compliance Committee regarding this issue. They claim the Minister did not advertise the proposed development in an appropriate, effective manner and did not take the appellant's views into consideration once they became aware of the proposed development. They also claim that the notices were only published in English and not Irish.	The Minister followed normal procedure in terms of public consultation for this application. In relation to the Aarhus Compliance Committee submission, no update on the progress of this has been provided by the appellant and the Technical Advisor cannot find this submission among the submissions listed on the Aarhus Compliance Committee website. The example of the newspaper notice contained in the departmental file received by ALAB shows the notice in both Irish and English.
Inadequate Appropriate Assessment (AA) and AA Conclusion Statement: the appellants claim the Minister made unsubstantiated assumptions in determining that the proposed development would have no significant impact on Natura 2000 sites. The appellants then go on to detail a number of issues they feel were not dealt with sufficiently in the AA Report or the AA Conclusion Statement and do not fulfil the requirements for an AA. These include:	The technical advisor agrees that there were deficiencies in the AA overall but does not necessarily agree with the reasons given by the appellant.

<ul style="list-style-type: none"> a. Screening out habitats without sufficient explanation b. Unresolved issues, that is, highlighted issues within the AA report were not resolved in the AA Conclusion Statement c. Inadequate consideration of ex-situ effects d. Inadequate consideration of increased traffic and access to the site and uncertainty over access to some sites e. Lack of assessment for alternative proposed access route f. Potential impacts on local otter population g. Potential impacts on local seal populations (species not specified), h. Not fully considering physical and biological impacts including biological effects, seston filtration, shading, fouling, introduction of non-native species, nutrient exchange and surface disturbance i. The potential for triploid Pacific oysters to reproduce. j. The risk posed by introducing Manila clam to the bay. k. Incorrect information regarding a lack of fishing activity in the bay l. Inadequate consideration on in-combination effects m. Inadequate consideration of the physical impacts of aquaculture n. The assessment of all 18 applications in one AA report rather than individually o. Lack of a bathymetric survey p. Inadequate consideration of identified residual impacts. q. Inaccurate conclusions regarding the impacts on recreational users and tourists 	<ul style="list-style-type: none"> a. The TA agrees, and these issues have now been resolved. b. The TA agrees, and these issues have now been resolved. c. The TA agrees, and these issues have now been resolved. d. This ties in with point a. e. This was resolved by moving access routes. f. Incorrect – other access routes proposed and assessed. g. The TA agrees, and these issues have now been resolved. h. The TA disagrees with this, these were covered in the AA. i. It is highly unlikely that triploid oysters would reproduce successfully. The TA feels the appellant may be confusing triploid and diploid oysters in this case. j. The TA did not find any risk from introducing Manila clam that cannot be safely mitigated for. k. The TA agrees, and this has now been resolved. l. The TA agrees, and this has now been resolved. m. The TA does not agree and cannot find any evidence to support this claim. n. This is standard practice for AA. o. There is no requirement for a bathymetric survey in a bay that dries out at low tide. p. The TA could not find evidence of this. q. The TA does not agree with this statement, and it does not tie in with their assessment – it is also not a topic
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<p>r. Relying on conclusions from data assigned a “low confidence.”</p> <p>s. Lack of consideration of facilities for packing and storage of harvested shellfish</p> <p>t. Lack of inclusion of conditions under Section 7 (3) of the Fisheries Act (1997).</p> <p>u. Inadequate consideration of the effect the proposed development will have on public access to the area</p>	<p>related to AA.</p> <p>r. This is an unfortunate reality in term of available data. However, the legislation specifies the use of the best available data, and that is what is available.</p> <p>s. Packing and storage will not occur onsite so there is no need to assess it in this AA.</p> <p>t. Section 7(3) relate to issues covered under the relevant Fish health legislation and many of the issues listed in the appellants appeal relate to finfish, not shellfish as is the case here.</p> <p>u. Public access to the area will not be limited by the proposed developments.</p>
Lack of an EIA: The appellant claims an EIA should have been carried out by the Minister for this development and that it contravenes the requirements under the Habitats Directive (rather than the EIA Directive)	The technical advisor assessed the need for an EIA in this case and determined it was not necessary, see Section 4 above.
Incorrect conclusion of the Minister regarding potential impacts on the local economy	The technical advisor did not find evidence of a significant negative impact on the local economy.
Not a designated shellfish area: the applicants claim this indicates the area should not be licenced for shellfish aquaculture.	The fact that the area is not a Designated Shellfish Area does not preclude it from being licenced for shellfish production.

AP4/1/2020	
Appellant: John Boyle	
Appeal issue	Technical Advisors Comment
The appellant claims to own the land across which the updated access route to Site T12/409A runs. The appellant has not been asked to give his permission for the applicants to have access through his lands, nor has he granted this permission.	The applicant disputes this and claim the access shown on the appellants map is incorrect. Assessment of the access route given in the files submitted by DAFM on www.landdirect.ie shows access along an existing road/track which is marked as a public right of way to the shore.
The appellants lands are used by the native corncrake as a nesting site.	Corncrake nesting is not expected to be significantly disturbed by increased use of an existing route in daylight hours.

AP13/1/2020	
Appellant: Coiste Glan & Glas an Fhál Carraigh agus Cósta Glan agus Glas an Fhál Carraigh,	
Appeal issue	Technical Advisors Comment
Lack of public consultation by the Minister when granting the licence	The Minister followed normal procedure in terms of public consultation for this application.
Potential negative impact on local tourism interests which rely on the unspoilt nature of the area	This site does appear to have the potential to have more of a visual impact than other sites at low tide due to its location, but this would only be for a part of each day.
Potential negative impact on a local marked walk “The Ballyness Way” which begins at the pier adjacent to the proposed development and which continues along the shore. A main focus of this walk is the local wildlife.	The proposed development would only be visible at low tide and so therefore is unlikely to be a major visual intrusion or disturbance, given the requirements for oyster culture in terms of working the site.
The appellant claims the proposed development will cause environmental disturbance to a number of species including geese, gulls, seals, otters, corncrake, curlew and choughs and the site is also apparently close to an eelgrass bed.	There was no significant disturbance noted for protected bird species in the AA assessment. In a more general sense, it may be disturbing to some bird species (not listed as SCI species) who used the sandflat for feeding.
The appellant claims the proposed development will be a health and safety risk to recreational users of the area.	This may apply to recreational kayakers and wind surfers, although the technical advisor recommends the site be properly marked, which should mitigate this risk.
Negative visual impact on the area due to the proposed development	This site does appear to have the potential to have more of a visual impact than other sites at low tide due to its location, but this would only be for a part of each day
Claims applicant provided false information regarding a nearby sewage outfall and by claiming the area is a designated shellfish area when it is not.	The appellant has apologized for mistakenly stated the area was a designated shellfish area. Designation is not a pre-requisite for licencing. There is a sewage outfall in the vicinity which could negatively impact water quality.
The proposed development will restrict seaweed harvesting in the area.	The proposed development is on a sandflat, a habitat which does not support seaweed growth.

AP13/2/2020	
Appellant: Falcarragh Tourists & Traders Association,	
Appeal issue	Technical Advisors Comment
Negative visual impact on the area due to the proposed development and resultant negative impact on local tourism	This site does appear to have the potential to have more of a visual impact than other sites at low tide due to its location, but this would only be for a part of each day.
Insufficient detail in AA Report and AA Conclusion Statement, and insufficient consideration of the impacts on local people in both these documents	The technical advisor agrees regarding the issue of insufficient detail in some parts of the AA assessment, although this has now been rectified. However, these types of assessment are designed to look at protected habitats and species and exclude human concerns.
Potential for the proposed development to have a negative impact on the economy of the area.	The technical advisor found the proposed developments may have a positive impact on the local economy.
Lack of public consultation by the Minister when granting the licence	The Minister followed normal procedure in terms of public consultation for this application.

AP16/1/2020	
Appellant: Joe Friel	
Appeal issue	Technical Advisors Comment
Lack of public consultation by the Minister when granting the licence	The Minister followed normal procedure in terms of public consultation for this application.
Negative visual impact on the area due to the proposed development	The technical advisor did not find this Site would have a significantly negative visual impact.
The appellant claims the proposed development will lead to houses in the area losing value and a loss of tourist revenue.	No evidence for this has been put forward or found by the technical advisor.
The appellant is concerned about the packing and processing of harvested shellfish and seems to be of the opinion this will happen onsite or very nearby.	Packing and processing of harvested shellfish will not occur on-site.
The appellant feels there should have been environmental, water quality and biological monitoring carried out before the licence for the proposed development was granted.	There is no legal requirement for this, the applicant takes on the risk in an area such as this which has no designation or classification that his licenced site may not produce shellfish

	suitable for human consumption.
The appellant owns the land immediately adjacent to the proposed development and claims his access to the shore will be totally blocked by trestles.	This is not deemed likely to be true given what is known by the technical advisor regarding oyster trestle layout. The local MED engineer has also specified minimum spacing between licenced areas for all proposed developments to allow access to the general public at low tide.
Health and safety concerns regarding biological waste buildup and chemical contamination from the proposed development, along with potential hazards caused by broken trestles and lost oyster bags among other items.	This type of aquaculture is extensive so there is no addition of feed or chemicals. Some biological waste build-ups directly under trestles is possible but is not a threat to human health. Broken trestles can be a health hazard, but the technical advisor does not see how lost oyster bags a health hazard in this situation would be. The technical advisor recommends that if a licence is granted, the standard conditions around good site husbandry and maintenance are included, therefore mitigating the risk around broken.
Impacts of potential noise pollution on the appellants family and local wildlife	Noise pollution would mainly come from tractors accessing the shore at low tide to maintain the stocks. This would likely occur every two weeks on spring tides and only during daylight hours.
Impacts on local habitats and wildlife due to the development of an access route along the shoreline.	This has been assessed as part of the AA and deemed non-significant.
Impacts on wild mussel populations in the area.	As Ballyness Bay is not a Classified Shellfish Production Area with an "A" rating, the appellant is risking his health consuming wild mussels he collects himself from the Bay. Oyster production at the density proposed is very unlikely to negatively affect the food supply to local mussel populations.
Impacts on fishing and hunting rights granted to the applicant in the folio he holds for the lands owned by him which are adjacent to the proposed development.	There are no negative impacts from the proposed development on the appellants fishing or hunting rights.

AP4/2/2020, AP5/2020, AP6/2020, AP7/2020, AP8/2020, AP9/2020, AP10/2020, AP11/2020, AP12/2020, AP13/3/2020 AP14/2020, AP15/2020 and AP16/2/2020 all have Save Ballyness Bay SAC Action Group as their appellant with the same appeal issues as listed

under AP3/2020 above. The technical advisor response is the same for all these appeals listed as for AP3/2020.

8.0 Oral Hearing Assessment

All appellants in these appeals requested an oral hearing. However, the technical advisor is of the opinion that this is not required as it would not aid in clarifying any issues or concerns relating to this appeal.

9.0 Recommendation of Technical Advisor with Reasons and Considerations

- 1) It is the technical advisors recommendation to **grant a licence** for appeal sites AP3/2020, AP4/1-2/2020, AP6/2020, AP7/2020, AP8/2020, AP9/2020, AP10/2020, AP11/2020, AP12/2020, AP15/2020 and AP16/1-3/2020. These sites are suitable for the proposed development for the following reasons:
 - There are no objections from a technical perspective as the sites are suitable for trestle culture, being in an area with a firm substrate of sand and a good tidal range for the intertidal culture of oysters.
 - An alternative access route has been identified which does not pose a risk to the Annex 1 habitat (2130); Fixed coastal dunes with herbaceous vegetation (grey dunes) which forms part of the Ballyness Bay SAC.
 - Although the sites are not in a Designated Shellfish Area or a Classified Bivalve Mollusc Production Area, this does not preclude the site from being licenced.
 - The area used by the sites do not utilise more than the 15% habitat use threshold identified for disturbance of a conservation interest within a SAC.
 - The Sites are a suitable distance from the known seal haul-out site identified in the bay.
 - The sites will have a positive impact on the local economy.
 - The sites will not have a significant negative impact on the statutory status, ecology or environment of the bay.
 - The sites will not have a negative impact on the man-made heritage of the area.
 - Visual impact of the Site from nearby roads will be minimal due to distance although there will be some visual impact for recreational users at low tide due to the flat, open nature of the bay, but this is not considered significant.
 - Potential risk to recreational users e.g. kayakers, windsurfers if the locations of the trestles are not marked at high tide, but the technical advisor recommends that suitable marking be made a condition of any licence granted.

- 2) It is the technical advisors recommendation to **grant a licence for part of the site for appeal site AP5/2020**. This site was granted with variation by the Minister, effectively splitting it into two sites. The TA advises granting T12/409B1 for the same reasons outlined above and granting with variation T12/409B2, removing the portion that overlaps with the 200m limit from seal haul out sites as shown in the accompanying maps.

- 3) It is the technical advisors recommendation to **refuse a licence** for appeal site AP13/1-3/2020 and AP14/2020. The sites are not suitable for the proposed development as they are not a suitable distance from seal haul out sites in the bay and therefore have the risk of causing a significant negative impact under site suitability, statutory status and ecological impact.

Technical Advisor: Dr Ciar O'Toole

Date: 10/04/2024