



AP23/2020 Aughinish bay, Co Clare

Addendum to External Technical Advisor Report

Dr Ciar O'Toole

14/04/2022

1. General Site Summary:

The site is located next to Aughinish Island, on the Galway Clare border at the south side of Galway Bay (Figure 1). The site is in an area which is both an SAC and SPA. It comprises of a rocky upper shore dominated by a number of seaweed species, mainly bladder wrack and serrated wrack. Some of the boulders of the upper shore are of a quite considerable size (with a diameter greater than 1 metre), especially to the eastern side of the shore, where the access point is proposed to be located (Figures 1 and 2).

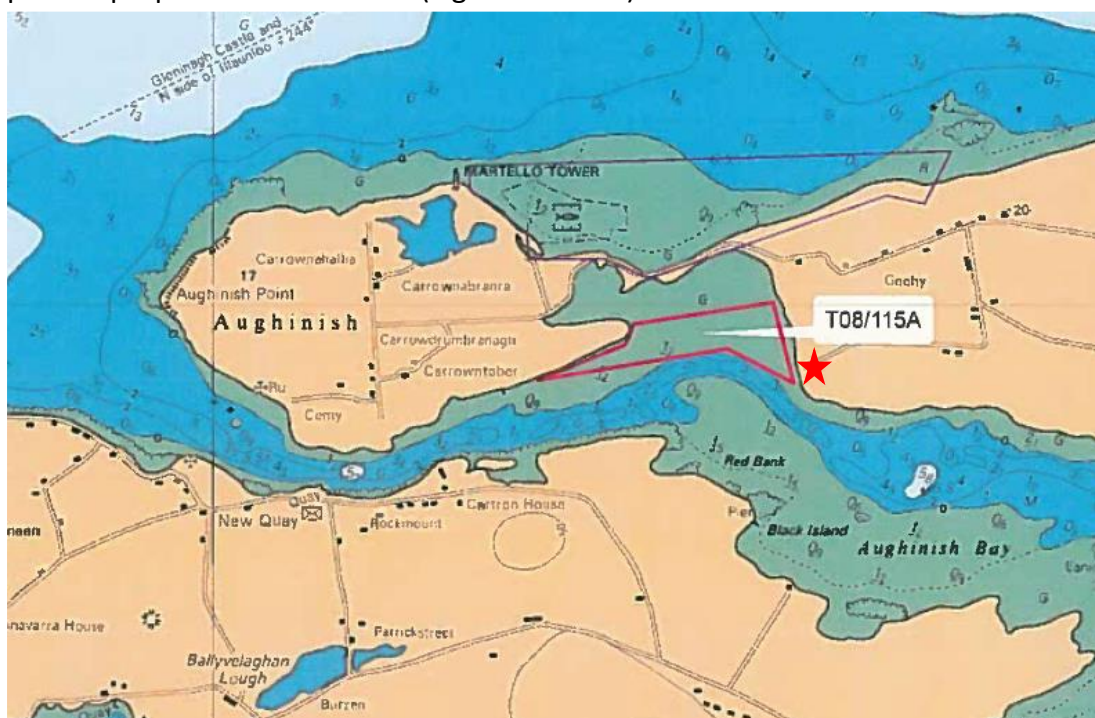


Figure 1: Site location and outline. Proposed access point marked with red star

Further down the shore, the substrate becomes a mixture of sand and mud and is dotted with numerous rocks, many of which are covered in seaweed. This fine muddy sand interspersed

with rocks, with a diameter ranging from approx. 15-30 cm covers the majority of the intertidal area, as can be seen in Figure 3.



Figure 2: Upper intertidal, eastern side of shore, close to proposed access point.

The proposed site starts approximately halfway down the intertidal area and stretches across the bay from East to West. The proposed site includes the area of large boulders in the upper intertidal to the East of the bay. The majority of the site is in the lower intertidal and is composed of sand and rocks as shown in Figure 3. There was one area of approximately 1 acre within the Site which was sand only, with no rocks present. The total site is over 17 hectares in size. On the western boundary, the site overlaps with existing comanage in the terrestrial area directly above the foreshore.



Figure 3: Fine muddy sand and rocks in part of the site, with some rocks covered in seaweed.

2. Follow on action by ALAB TA:

2.1 Site visit 1 - 11/08/2021 – see Draft Site Visit Report v1 Aughinish August 2021

2.2 Notices and second site visit

Following on from the initial site visit, as outlined in the Site Visit Report, several actions were taken by the ALAB Technical Advisor and Secretariat:

2.2.1 Further enquiries were made to the applicant via a Section 47 Notice (Appendix I), that requested:

“Detailed information on proposed access on to the site from the roadway, to include a map of the foreshore with route and site layout marked and details of how the proposed route and site layout will allow for initial site set up and vehicular access throughout the entirety of your site without the movement of any boulders as stated on page two of your appeal received on the 27th November 2020.”

The applicant responded by sending photographs of a jeep and trailer driven down to the low tide point. She also assured the ALAB TA via a phone call that her plan did not involve moving any rocks or boulders on the site. However, the requested map with marked access route was not provided nor was any formal plan or indication on the practicalities of setting up the Site as planned without disturbing existing boulder and rock locations.

- 2.2.2 A request was made via Section 47 letter to DAFM to provide the deed mentioned in, but not provided with the Ministers file for this site.
- This was provided by DAFM on 10th September 2021.
- 2.2.3 Following this, a Section 46 letter was issued to the applicant in November 2021 asking her to assess the claims made in the deed received by ALAB from DAFM on 10th September 2021.
- The Applicant submitted an engineer's drawing to the Board on 25th November 2021, showing no overlap between the two sites.
- 2.2.4 A second site visit was undertaken by the ALAB TA on the 22nd February 2022 to look at possible variations to the site which would avoid the areas with large boulders, deemed unsuitable for oyster culture by the ALAB TA and the Board.

3. Updates to Section 61 Assessment:

An update to Section 61 Assessment is provided here, incorporating the results of the additional requests for information and site visits by the ALAB TA.

3.1 Site Suitability:

Extract from Interim Technical Advisor report prepared by Eco Eireann, Section 6.1 Site Suitability and ALAB Technical Advisor's comments:

"The proposed site is considered to be only partially suitable for some methods of aquaculture. Consideration should be given to both the location of the site in an intertidal area, where longline cultivation is likely to be problematic and the potential for modification of the existing substrates and habitats, through the movement of boulders to accommodate aquaculture structures such as trestles and vehicular access. "

Agreed, it is proposed that a condition of the licence include that the licensee not be allowed to move any rocks or boulders, and that the site is reduced to avoid the areas with the largest concentrations of boulders where the placing of horizontal longlines would not be possible.

"The access route proposed within the initial licence application traverses an adjacent public laneway/ track located to the east of the proposed site. This laneway provides direct access onto the foreshore from local roads. The end of this laneway, where it meets the foreshore, is comprised of small-large size boulders of varying sizes. Access to the proposed site through this access point will likely require the removal or movement of at least some of these boulders to enable safe access for husbandry and set-up activities."

The Eco Eireann assessment had misidentified the access route. I have confirmed there is a public road which leads to the shore as indicated on the licence application. The concern regarding access to the proposed site is however valid. The Section 47 Notice

(Appendix I) sent to the Appellant on the 26 August 2021 outlining the Board's concerns regarding access to the site and the potential moving of rocks and boulders on-site. As outlined in Section 2.2 above, the response which was received was not satisfactory in terms of the original request put to the Appellant but provided some level of clarity on the access route and intention not to move rocks or boulders from their present locations.

3.2 Other Users

Extract from Interim Technical Advisor report prepared by Eco Eireann, Section 6.2 Other Users and ALAB Technical Advisor's comments:

“Due to the location of the proposed site in a remote rural area and the existing habitats onsite it is considered that the proposed site location holds little value for marine recreational activities, with the amenity value of the area being limited to scenic views and shore-based recreational activities. “

I disagree – as outlined in Section 4 below, there is a potential clash between the proposed development and existing traditional seaweed harvesting rights.

*“A private ownership claim to an oyster bed supposedly within the bounds of the proposed site had been submitted to the Aquaculture and Foreshore Management Division of the DAFM subsequent to the period of public consultation of the initial licence application. No details of this claim were provided to the appellant upon request or to the ALAB as part of the minister's file. The AFMD of the DAFM have stated that this claim was not investigated further due to fact that the proposed site was already being considered for refusal for separate reasons, those being the presence of the native oyster and the invasive seaweed *Sargassum muticum*, and the questionable suitability of the site for the proposed methodologies. “*

As outlined in Sections 2.2.2 and 2.2.3 above, this has been investigated further, with an engineers drawing submitted by the Appellant showing no overlap with the two sites.

3.3 Statutory Status

As outlined in Section 6.3 of the Eco Eireann Interim Report, the proposed aquaculture site is located within the bounds of the Galway Bay Complex SAC and Inner Galway Bay SPA. An Appropriate Assessment (MI, 2019; Atkins, 2019) and Appropriate Assessment Conclusion Statement (DAFM, 2020) has been produced by the DAFM in relation to aquaculture activities in both the Galway Bay SAC and SPA.

The conclusions of these reports found that no significant impact of the proposed development would be caused to the SAC. The SCI species of the SPA had the potential to be disturbed and displaced according to the Appropriate Assessment Report (Atkins, 2019). However, given updated information, the Eco Eireann Interim TA Report was able to update this conclusion, as outlined in Section 6.3. As such, the predicted impact of this development

on SCI species of the SPA no longer reaches the 5% threshold for disturbance that indicates a significant cumulative effect.

3.4 Economic Effects

Extract from Interim Technical Advisor report prepared by Eco Eireann, Section 6.4 Economic Effects and ALAB Technical Advisor's comments:

"It is the considered opinion of the advisor that the operation of these sites could provide a positive effect to the local and regional economy. Through the provision of year-round employment, provision of local produce to local markets and indirectly through the provision and development of a long-term sustainable business providing investment capital to the region."

Given the outstanding issue regarding seaweed harvesting rights, it could also have a small localised negative economic impact.

3.5 Ecological Effects, Environmental Effects, Man-made Heritage

All remaining sections of the Section 61 assessment do not require further updates.

4. Outstanding Issue

There is one outstanding issue at this point, that of seaweed harvesting rights in the area. There is evidence of traditional seaweed harvesting on this site as reported by the MED and in the draft TA report. See Figure 4. Further research by the ALAB TA has found four people are known to be actively harvesting seaweed at the site. Raphael Crowley, Engineer with the Marine Engineering Section in DAFM had a conversation with two people while they were removing a trailer load of seaweed by tractor from the shore in July 2020, confirming that they regularly used the site for seaweed harvesting. This forms part of his official report on the site. Pete Donlon, regional officer for the Galway area with BIM, also confirmed to me that seaweed collection was active in the Bay.



Figure 4: showing evidence of tracks created to facilitate traditional seaweed harvesting.

A folio search of the website of the Property Registration Authority of Ireland, undertaken by the Secretary to the Board showed no seaweed rights in folios directly adjacent to the foreshore. It should also be noted that no appeals were made against the application or the appeal on grounds of existing users, nor were any submissions made regarding this issue.

5. ALAB TA recommendation:

I have concerns on the effects on other users on granting a licence at this site and the overall site suitability as regards access and movement of rocks and boulders. Please also see Appendix II for a potential issue regarding the Foreshore Act and Seaweed harvesting. However, if no direct seaweed rights are shown to impinge on the proposed site, I recommend approving the licence application with the following conditions:

- A total prohibition on moving rocks/boulders within the Site

- Addition of the recommended licence conditions from the AA conclusion statement for the Site to the Licence
- Granting of an amended site of approx. 10 ha (see Figure 5) with co-ordinates:

Proposed variation Site Co-ordinates			
Latitude	Longitude	ITM	
		X	Y
53.163085	-9.05433	529496	713029
53.161625	-9.054277	529497	712867
53.162214	-9.048706	529870	712927
53.161210	-9.044677	530138	712811
53.163825	-9.046144	530044	713104

- Co-ordinates of the amended site be provided to the applicant/appellant for them to provide ALAB with an updated site map and a corresponding site layout plan for approval before a licence is issued. This revised site layout plan is to show the location of all proposed trestles and longlines for supporting baskets, in the same ratio as proposed in the original site plan, along with one clearly marked access route, which is not to be deviated from.

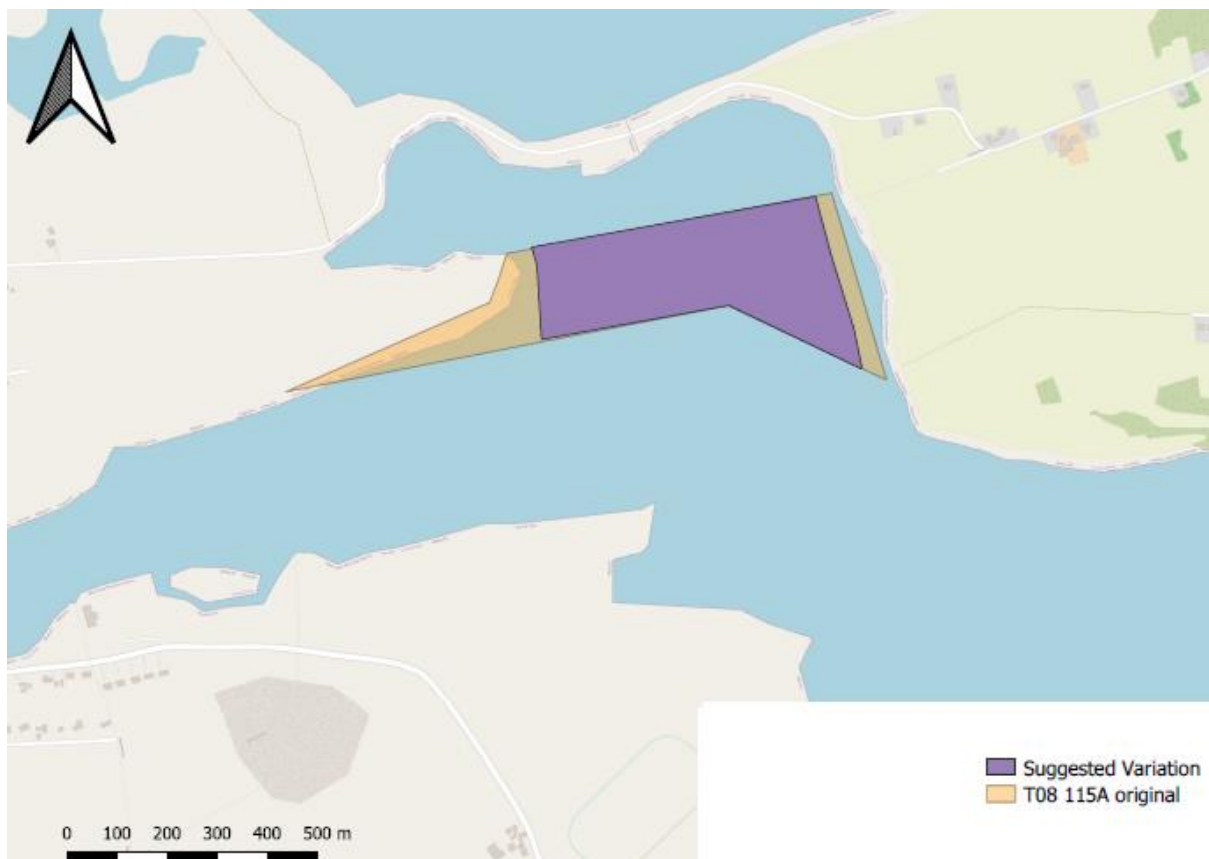
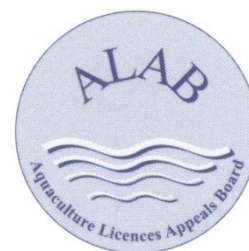


Figure 5: suggested amended site

Dr Ciar O'Toole
April 2022

Appendix I – S47 Notice of 26 August 2021:

**An Bord Achomharc Um Cheadúnais Dobharshaothraithe
Aquaculture Licences Appeals Board**



Ms. Aoife Buckley,
Sliogeisc Siar Teoranta,
36 Mullan Mor,
Tuam Rd.,
Co. Galway

26 August 2021

Our Ref: AP23/2020

Site Ref: T08/115A

Re: Appeal against the decision of the Minister for Agriculture, Food and the Marine to refuse an Aquaculture for the cultivation Native and Pacific Oysters using Bags and trestles to Sliogeisc Siar Teoranta using bags and trestles, float and bag, moulded baskets and longlines on the inter-tidal and sub-tidal foreshore on site ref T08/115A in Aughinish Peninsula, Co. Clare.

Dear Ms. Buckley,

I refer to the above Appeal.

Pursuant to **Section 47(1)(a)** of the Fisheries (Amendment) Act, 1997, as amended, ("the Act"), where the Board is of the opinion that any document, particulars or other information is or are necessary for the purposes of enabling the Board to determine the Appeal, it may serve a notice on a party requiring that party to submit to the Board such documents, particulars or other information as are specified in the Notice.

Having considered the appeal and the information provided to it, the Board has determined that further documents are necessary for the purposes of enabling the Board determine the Appeal.

The Board hereby requires you to provide the following:

1. Detailed information on proposed access on to the site from the roadway, to include a map of the foreshore with route and site layout marked and details of how the

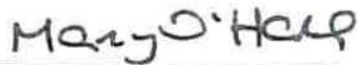
proposed route and site layout will allow for initial site set up and vehicular access throughout the entirety of your site without the movement of any boulders as stated on page two of your appeal received on the 27th November 2020. Our Technical Advisor has recently visited your site and has concerns that the site cannot be set up and accessed by vehicle as planned without significant boulder removal.

If you wish to discuss this request you can contact the Technical Advisor to the Board, Dr Ciar O'Toole on 087-4097160 or ciar.otoole@alab.ie.

In accordance with section 47 (1) (a) of the Act, the Board requires this information within **30 days** of receipt of this letter. Please note that if the documents, particulars or other information specified above are not received before the expiration of the period specified above, or such later period as may be agreed by the Board, the Board will, without further reference to you, determine the appeal.

Please also note that a person who refuses or fails to comply with a requirement under section 47 (1)(a) shall be guilty of an offence.

Yours sincerely



Mary O'Hara
Secretary to the Board

Appendix II -Foreshore Act and Seaweed harvesting

Page 166, Chapter 20 of the National Maritime Planning Framework 2021 states “Where an individual right to harvest seaweed exists, a licence under the 1933 Foreshore Act is not required by the holder of that right in order to harvest seaweed, nor can any other entity be licenced under the Foreshore Act to harvest seaweed in an area where existing formal or informal rights to harvest seaweed already exist. Legal advice from the Office of the Attorney General has confirmed this.

However, anyone harvesting wild seaweed, even where they have a right to harvest must still comply with environmental legislation including the provisions relating to the Birds and Habitats Directive. This is especially important as seaweed is often found in or near Special Areas of Conservation. It is also important to note that no related applications have been approved by the Minister since March 2014. A number of applications made under the Foreshore Act for the commercial harvesting of wild seaweed are on hand in the Department of Housing, Local Government and Heritage. These applications are now being considered in the context of the advice received from the Attorney General. The applicants have been informed of this advice. Work with these companies and with representatives of harvesters is on-going.”

See the links below for more on this ongoing issue between traditional harvesters with potential unregistered rights, and applications for commercial seaweed harvesting where these rights overlap:

<https://www.oireachtas.ie/en/debates/question/2019-01-29/589/>

<https://www.rte.ie/news/connacht/2018/0701/974549-seaweed-harvesters-galway/>

<https://www.irishexaminer.com/business/arid-30853103.html>

<https://www.oireachtas.ie/en/debates/question/2021-09-23/238/>