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Aquaculture Licences Appeals Board
Kilminchy Court
Dublin Road
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Co. Laois.

Sent by email to: info@alab.ie

30th July 2025

**Appeal observation pursuant to the provisions of S45 of the 1997 Fisheries
Amendment Act**

Please find attached An Taisce's submission in support of appeal AP1-80-25 by local Kinsale residents, appeal AP1/100/25 by Friends of the Earth and appeal AP1/135/25 by the Environmental Forum to ALAB in relation to aquaculture in Kinsale Harbour, County Cork, site reference T05-472A.

An Taisce notes that there is no provision in S45 of the 1997 Act setting out how an observation on an appeal is to be made, and as such this observation is being made by email. We wish to raise the following issues.

1. Cormorants

An Taisce made a submission on this proposed licence back in 2019 on the issue of Cormorants and potential ex-situ impacts on this SCI species of nearby SPAs. We note the this was raised as an issue in appeal reference AP1-80-25, and we will reiterate our concerns now to support their argument, as we believe that they were not adequately addressed, or considered in the licencing process.

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One of our primary concerns is the use of dredging as a means to harvest the mussels. Dredging for mussels in the subtidal area can have significant impacts on benthic organisms, damaging and altering the substrate, and inducing trophic cascades, with impacts on aquatic species and birds ([Dolmer et al. 2001](#), [Dolmer 2002](#), [Neckles et al. 2005](#), [Atkinson et al. 2010](#)). In addition, the production of blue mussels in bottom culture can change the structure of the ecosystem, thereby affecting several trophic levels (Dankers & Zuidema 1995¹). Bottom culture may change the composition of the benthic community, with a decreased number of species and individuals ([Beadman et al. 2004](#), [Smith & Shackley 2004](#)). The altered composition of the seabed induced by dredging thereby impoverishes the seabed, and interferes with recruitment, growth and survival of the associated benthic fauna ([Dolmer and Fransen, 2002](#); and references therein). It has been shown that there is a rapid invasion of dredged areas by scavengers, which can change the trophic structure of the ecosystem ([Dolmer et al. 2002](#), and references therein). In fact, it has been found that sponges, echinoderms, anthozoans, molluscs, crustaceans and ascideans had a reduced density or were not observed at all 4 months after an area had been dredged (P. Dolmer, unpublished)

The Sovereign Islands SPA is less than 1km off the coast, and is of ornithological importance mainly for the breeding colony of Cormorant, which is both the largest in Co. Cork and of national importance. Cormorants disturb their prey from sandy or muddy seabed habitats, in shallow coastal water, and forage over rocky as well as sandy substrates. They generally feed on bottom-dwelling fish, but can also take fish from the surface and main water column as well as crustaceans². As such, bottom mussel culturing could potentially alter the feeding resource available to birds such as Cormorants. The NIS discounted the risk to Cormorants based on the distance from the SPA and the availability of large areas of alternate foraging grounds. The NIS even appears to go as far as suggesting that mussel farming may be beneficial for cormorants:

"the potential for the mussel beds to enhance habitat structural diversity and in this way provide greater foraging opportunities for fish eating species cannot be discounted."

Given the significant ecological implications which arise on foot of bottom dredging, this is a highly improbable claim, and we would highlight that there is no evidence underpinning this statement. As such, it is merely conjecture and should not have been given consideration in any lawful screening decision.

No bird data was provided as part of the screening, or analysis of use of the site by cormorants. We have received anecdotal reports of Cormorant foraging in the proposed area, and as such under the precautionary principle the ex-situ effect of this aquaculture proposal on the QI species should have been considered. The screening decision appears to be primarily predicated on a presumption that the site is a sufficient distance from the SPA, and that there are other areas suitable for foraging. No evidence base was provided to support this statement, or to establish what areas are suitable for Cormorant feeding. This latter point is particularly important given the poor quality of many of the estuaries in the south and south east, include Bandon Estuary which is at poor WFD status, largely as a result of agricultural nitrogen pollution, which would undoubtedly diminish feeding opportunities for species like

Cormorants. We would query how was the decision maker was able to conclude beyond reasonable scientific doubt that there would be no adverse impact on the SCI of the Sovereign Islands SPA, when all they had was a statement from the applicant with no underpinning analysis or data?

We would highlight this [guidance from the NPWS](#) when it comes to the level of evidence necessary to end an AA process at screening stage:

*"The findings and conclusions of the screening process should be documented, **with the necessary supporting evidence and objective criteria**. This is of particular importance in cases where the AA process ends at the screening stage because the conclusion is that no significant effects are likely."* (Our emphasis)

The ECJ underscored the importance of certainty at screening stage in EcoAdvocacy C-72121, where at para 43 the court held:

*"In the light of the foregoing considerations, the answer to the fifth question is that Article 6(3) of Directive 92/43 must be interpreted as meaning that although, where a competent authority decides to authorise a plan or project likely to have a significant effect on a site protected under that directive without requiring an appropriate assessment within the meaning of that provision, that authority is not required to respond, in the statement of reasons for its decision, to all the points of law and of fact raised during the administrative procedure, **it must nevertheless state to the requisite standard the reasons why it was able, prior to the granting of such authorisation, to achieve certainty**, notwithstanding any opinions to the contrary and any reasonable doubts expressed therein, that there was no reasonable scientific doubt as to the possibility that that project would significantly affect that site."* (our emphasis)

It is our view that the potential ex-situ impacts on the Cormorants of the Sovereign Island SPA were screened out prematurely. Given the ecosystem impacts outlined above, the extent of bottom cultured mussels proposed would alter the benthic habitat and processes over a large area (25 hectares), with trophic cascades impacting on other species, and ultimately on foraging birds. The proposed cultivation could potentially result in the loss of an important ex-situ feeding site which would be contrary to the achievement of favourable conservation status. Favourable conservation status is achieved when:

'there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.'

If the location of this mussel cultivation reduces the foraging area available to the Cormorant population, the conservation status may be impinged. The screening report should assess the indirect impacts on these protected birds, and include bird survey data to underpin any screening decision.

2. Water Framework Directive

Dredging can resuspend bottom sediment, oxygen-consuming substances and nutrients. It has been shown that mussel dredging significantly increased the amount of suspended particulate matter for a few hours after dredging, and with concomitant oxygen decreases, and ammonia increases ([Dolmer and Fransen, 2002](#); and references therein). This is of particular relevance in this instance, as the estuary within which the aquaculture would be situated has declined in status since the public consultation on this aquaculture licence was carried out, and has diminished from moderate WFD status to poor status. This classification was based on the nutrient and oxygen conditions, both of which would be exacerbated by dredging.

We are of the view that any licencing of this site requires assessment as to whether it could affect the attainment of the Article 4 WFD Objectives. Article 4 (1) of the WFD provides:

"In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

(i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water

(ii) Member States shall protect, enhance and restore all bodies of surface water ... "

We would highlight that Article 5 of the Surface Water Regulations 2009 requires a public authority, in the performance of its functions, not to undertake those functions in a manner that knowingly causes or allows deterioration in the chemical or ecological status of a body of surface water. A specific Article 4 WFD assessment should be carried out by ALAB to determine what impact these works might have on the legal obligation to restore the estuarine water to good status by 2027. We would highlight that in Case C- 461/13 Weser the CJEU held:

"Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that the Member States are required

— unless a derogation is granted

— to refuse authorisation for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive."

The Weser case created a jurisdictional requirement and established that authorisation for a project has to be refused where there may be an adverse impact on the objectives of Article 4.

3. Seagrass Beds

We would highlight new survey data which has come to light in regard to the existence of seagrass beds in close proximity to the proposed aquaculture licence site. The existence of seagrass beds was raised with DAFM during the public consultation by Kinsale Chamber of Tourism and Business on this licence, but no action appears to have been taken on foot of that information. Appeal number AP1-80-25 includes a map which demonstrates that there is a direct overlap of the area proposed for licencing for mussel cultivation and dredging, and the area where *Zostera marina* have been recently found to exist (Figure 1).

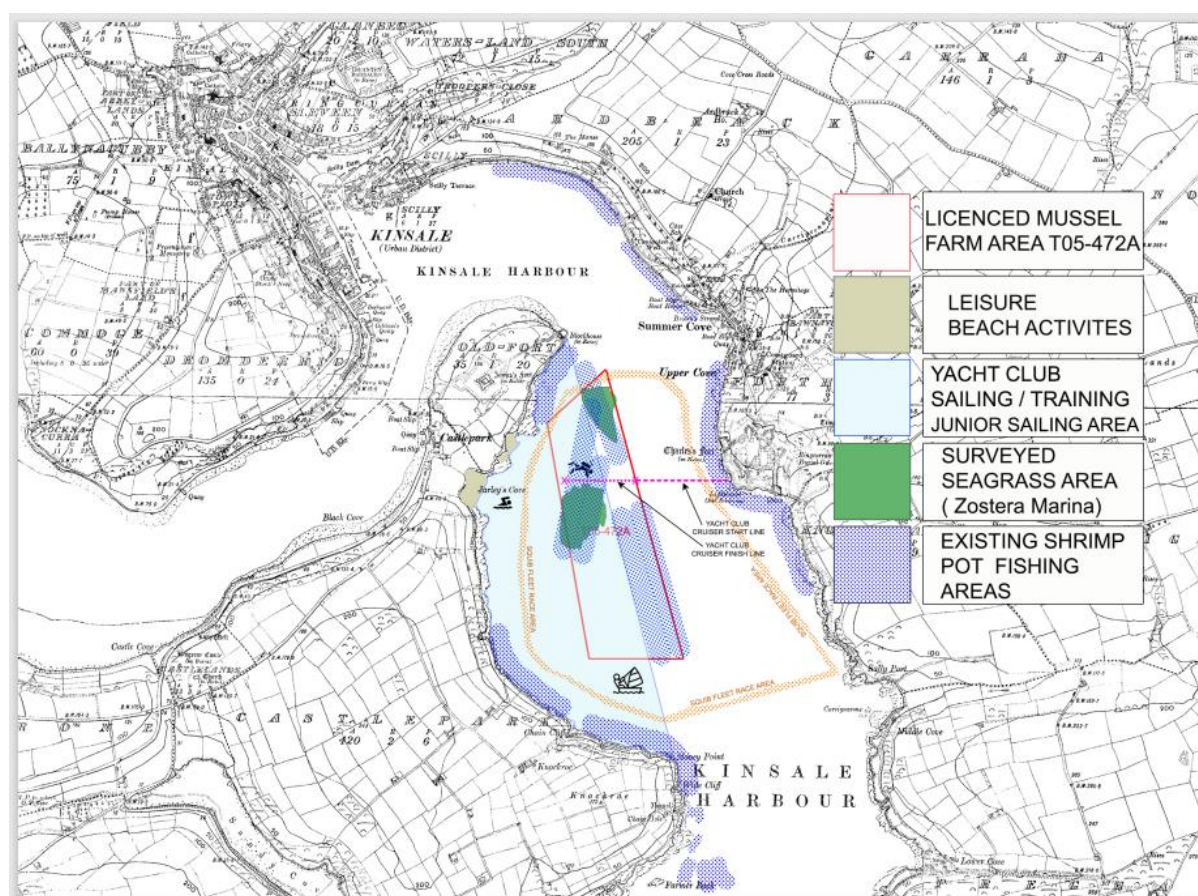


Figure 1: Map reproduced from appeal number AP1-80-25

The [NPWS outlined](#) the ecological importance of *Zostera*

"Zostera beds constitute a very important component of several habitats protected under the 1992 EU Habitats Directive. Indeed, the important role that seagrass beds play in biodiversity and the potential loss of ecosystem service that accrues through their destruction resulted in their placement on the 2004 Initial List of Threatened and Declining Species and Habitats by the OSPAR Commission. As well as having intrinsic value that merits protection, they are also potential indicators of broader habitat quality ..."

[Neckles et al \(2005\)](#) highlighted that there was a negative impact on *Zostera marina* as a result of commercial mussel dredging in Maine, with populations taking between 6-20 years to recover. As such, it is of serious concern that any licencing of this area will lead to a decimation of this highly important habitat. We would observe that zostera are known for their importance in ecosystem services, in particular their role in carbon sequestration. [Dahl et al. \(2020\)](#) highlight their ecological importance:

"Carbon sequestration and nutrient retention are highly important ecosystem services provided by seagrass ecosystems. The natural carbon and nutrient sinks these meadows provide are suggested to contribute to the mitigation of the acute threats to human wellbeing posed by climate change and increased anthropogenic pressure on the coastal zone^{5,6}. Therefore, there is an urgent need to increase protection of environments with high capacity for long-term carbon storage and nutrient filtering"

Given their carbon sequestration potential, we are of the view that the requirements of the Climate Action and Low Carbon Development Act 2015 (as amended) must be taken into consideration by ALAB prior to licencing any mussel cultivation, which would likely result in a decimation of this highly important habitat, with concomitant increases in carbon loss from the area. Section 15(1) of the Climate Act (as amended) places obligations on relevant bodies, including ALAB in this case, and we would highlight Article 15(1)(d) and (e) in particular:

15 "A relevant body shall, in so far as practicable, perform its functions in a manner consistent with—

(a) the most recent approved climate action plan,

(b) the most recent approved national long term climate action strategy,

(c) the most recent approved national adaptation framework and approved sectoral adaptation plans,

(d) the furtherance of the national climate objective, and

(e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State."

Is mise le meas,



Elaine McGoff,

Natural Environment Office, An Taisce – The National Trust for Ireland.