

**ALAB**

An Bord Achomhairc Um  
Choadúnais Dobharshaothraithe  
Aquaculture Licences Appeals Board

## Notice of Appeal Under Section 40(1) of Fisheries (Amendment) Act 1997 (No.23)

### APPEAL FORM

Please note that in accordance with Section 40(2) of the 1997 Act this form will only be accepted if delivered by <b>REGISTERED POST</b> or by hand to the ALAB offices at the following address: <b>Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois, R32 DTW5</b>		
Name of Appellant (Block Letters)	Mr & Mrs Michael Murphy and Mr & Mrs Clwyd Evans	
Address of Appellant		
Eircode		
Phone No.	Email address (enter below)	
Mobile No.		
Please note if there is <b>any change</b> to the details given above, the onus is on the appellant to ensure that ALAB is notified accordingly.		
<b>FEES</b>		
<b>Fees must be received by the closing date for receipt of appeals</b>	Amount	Tick
An appeal by an applicant for a licence against a decision by the Minister in respect of that application	€380	
An appeal by the holder of a licence against the revocation or amendment of that licence by the Minister	€380	
An appeal by any other individual or organisation	€150	✓
Request for an Oral Hearing* (fee payable in addition to appeal fee) *In the event that the Board decides not to hold an Oral Hearing the fee will not be refunded	€75	
Fees can be paid by way of Cheque or Electronic Funds Transfer		
Cheques are payable to the Aquaculture Licences Appeals Board in accordance with the Aquaculture Licensing Appeals (Fees) Regulations, 2021 (S.I. No. 771 of 2021)		
<b>Electronic Funds Transfer Details</b>	IBAN: IE89AIBK93104704051067	BIC: AIBKIE2D
Please note the following: 1. Failure to submit the appropriate fee with your appeal will result in your appeal being deemed invalid. 2. Payment of the correct fees <b>must be received on or before</b> the closing date for receipt of appeals, otherwise the appeal will not be accepted. 3. The appropriate fee (or a request for an oral hearing) must be submitted against each determination being appealed.		



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The Legislation governing the appeals is set out at Appendix 1 below.

<b>SUBJECT MATTER OF THE APPEAL</b>	
<p>The determination by the Minister for Agriculture, Food and the Marine to grant an Aquaculture License to Woodstown Bay Shellfish Limited for authorisation to cultivate mussels using bottom culture on the sub-tidal foreshore on a 23.16 hectare site in Kinsale Harbour, Co. Cork.</p>	
Site Reference Number: - (as allocated by the Department of Agriculture, Food, and the Marine)	T05-472A
<b>APPELLANT'S PARTICULAR INTEREST</b>	
<p>Briefly outline your particular interest in the outcome of the appeal:</p> <p>As residents of Kinsale with commercial businesses in the town, we are concerned that the cultivation of mussels within Kinsale harbour using bottom culture will impact the tourism amenity of Kinsale harbour and adversely impact our business interests which are dependant on tourism.</p>	
<b>GROUND(S) OF APPEAL</b>	
<p>State in full the grounds of appeal and the reasons, considerations, and arguments on which they are based) (if necessary, on additional page(s)):</p> <p>See attached 3 No additional pages.</p>	

## **Department of Agriculture, Food and the Marine Site Reference No: T05-472A**

Additional Pages to Support an Appeal by:

Mr & Mrs Michael Murphy and Mr & Mrs Clwyd Evans

To the determination by the Minister for Agriculture, Food and the Marine to grant an Aquaculture License to Woodstown Bay Shellfish Limited for authorisation to cultivate mussels using bottom culture on the sub-tidal foreshore on a 23.16 hectare site in Kinsale Harbour, Co. Cork.

### **POINT 1**

BIM Report entitled '*Alien Species and Aquaculture*' published in 2023 in relation to the bottom grown mussel sector states:

*"Permission for seed fishing to supply the bottom grown mussel sector, and retention of Marine Stewardship Council (MSC) certification requires risk assessment for the movement of mussel seed and stocks from seed beds to licensed sites and between licensed sites."*

Given the near-total collapse of Irish Sea seed mussel beds in recent years and the lack of a discernible domestic source, the likely reliance on imported seed carries significant and unquantifiable risk.

This risk has not been addressed in the Application.

### **POINT 2**

Marine Pollution Bulletin 209 (2024) 117082 contains a paper by *Pedro Beca-Carretero et al.*, entitled '*An integrated mapping approach highlights extended distribution and high environmental status of Irish seagrass meadows*' which identifies the area of the subject mussel farm Application as a potential habitat for seagrass meadows.

No adequate habitat survey, benthic baseline or appropriate assessment under Article 6(3) of the Habitats Directive has been carried out to determine whether the proposed activity could cause deterioration or disturbance to these habitats.

Additionally, we make the following observations in relation to the reasons and considerations for the Minister's Determination:

**A. Scientific advice is to the effect that the waters are suitable:**

The water quality will be affected and an adequate study has not been carried out of the effects of dredging on water quality, seagrass and protected wildlife. The mere presence of seagrass requires formal ecological assessment under EU Law before any disruptive marine activity – particularly dredging - can be licensed.

**B. Public access to recreational and other activities can be accommodated by this project:**

How can public access to recreational and other activities be accommodated ? The roads systems are already overloaded in this amenity area, the Dock beach being the only beach for Kinsale. This area is used year round by locals, swimmers and walkers. There will naturally be consequences with machinery and vehicles for the proposed development on the roads to this amenity.

**C. The proposed development should have a positive effect on the economy of the local area:**

The proposed development will not have a positive effect on the economy of the area. Local fishermen working in this area will lose their jobs and income, sailing, fishing vessels and swimming for locals and visitors will be impacted.

**D. All issues raised during Public and Statutory Consultation phase:**

This is incorrect, there was no public consultation. When we enquired from the Department of Agriculture, Food and Marine, in Clonakilty, we were given no information, our objection in 2019 was ignored, all past objections have also been ignored by the present Minister, and we were told we would have to wait for information of licensing which would be on their website and in the Southern Star Newspaper.

In addition, Cork County Council, as Port Authority for Kinsale Harbour has confirmed that no Operating Agreement was received from the applicant. Vessel activity, dredging schedule, licensing, and safety protocols were not submitted to the Harbour Master. Without this, no risk assessment on shipping interference, beaching protocols, or berthing pressure was possible. Granting a license in the absence of this data is premature and procedurally deficient. Also, the mid channel bar for navigation into the harbour is narrow already, and sedimentation from dredging will narrow the channel further creating a navigational hazard.

There is no archaeological assessment or consultation with the National Monuments Service or Underwater Archaeology Unit (UUA) of the Department of Housing, Local Government and Heritage.

**E. There are no effects anticipated on the man-made environment heritage of value in the area.**

The proposed site lies adjacent to James Fort and the Block House, and there was no archaeological impact assessment carried out as to how the dredging will disturb or destroy possible significant archaeological material including maritime infrastructure and possible shipwrecks.

**F. No significant effects arise regarding wild fisheries:**

The Proposal involves bottom culture mussel farming with dredging, which displaces sediment, destroys benthic fauna and threatens biodiversity. There is a rich crab population in this area and there are also otters in the area, which is listed as an Annex IV protected species. There is no baseline ecological survey, and this contravenes the precautionary principle set out in EU environmental legislation.

**G. The proposed Aquaculture activities do not spatially overlap with Natura 2000 sites and there should be no significant impacts on the nearest Natura site.**

Although the site does not spatially overlap with designated Natura 2000 areas, it is adjacent to two such sites (Old Head of Kinsale SPA (4021) and Sovereign Islands SPA (4124)). There will be indirect water pollution which could put habitats for crabs and otters at risk.

**H. No significant impacts on the marine environment and the quality status of the area will not be adversely impacted:**

The impact on the environment and local areas has already been included in the above points.

**I. The Aquaculture license contains terms and conditions which reflect the environmental protection required under EU and National Law:**

Details of the terms and conditions were not available to us, so we were unable to comment on this.


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**CONFIRMATION NOTICE ON EIA PORTAL (if required)**

In accordance with Section 41(1) f of the Fisheries (Amendment) Act 1997, where an Environmental Impact Assessment (EIA) is required for the project in question, please provide a copy of the confirmation notice, or other evidence (such as the Portal ID Number) that the proposed aquaculture the subject of this appeal is included on the portal established under Section 172A of the Planning and Development Act 2000. (See Explanatory Note at Appendix 2 below for further information).

Please tick the relevant box below:

EIA Portal Confirmation Notice is enclosed with this Notice of Appeal			
Other evidence of Project's inclusion on EIA Portal is enclosed or set out below (such as the Portal ID Number)			
An EIA was not completed in the Application stage/the Project does not appear on the EIA Portal		✓	
Details of other evidence			
Signed by the Appellant		Date	23 / 6 / 25
<b>Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices</b>			
<b>Payment of fees must be received on or before the closing date for receipt of appeals, otherwise the appeal will be deemed invalid.</b>			

This Notice of Appeal should be completed under each heading, including all the documents, particulars, or information as specified in the notice and duly signed by the appellant, and may include such additional documents, particulars, or information relating to the appeal as the appellant considers necessary or appropriate."

**DATA PROTECTION** – the data collected for this purpose will be held by ALAB only as long as there is a business need to do so and may include publication on the ALAB website.

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### Appendix 1.

#### Extract from the Fisheries (Amendment) Act 1997 (No.23)

40. (1) A person aggrieved by a decision of the Minister on an application for an aquaculture licence or by the revocation or amendment of an aquaculture licence may, before the expiration of a period of one month beginning on the date of publication in accordance with this Act of that decision, or the notification to the person of the revocation or amendment, appeal to the Board against the decision, revocation or amendment, by serving on the Board a notice of appeal.
- (2) A notice of appeal shall be served—
- (a) by sending it by **registered post** to the Board,
  - (b) by **leaving it at the office of the Board**, during normal office hours, with a person who is apparently an employee of the Board, or
  - (c) by such other means as may be prescribed.
- (3) The Board shall not consider an appeal notice of which is received by it later than the expiration of the period referred to in subsection (1)
41. (1) For an appeal under section 40 to be valid, the notice of appeal shall—
- (a) be in writing,
  - (b) state the name and address of the appellant,
  - (c) state the subject matter of the appeal,
  - (d) state the appellant's particular interest in the outcome of the appeal,
  - (e) state in full the grounds of the appeal and the reasons, considerations and arguments on which they are based, and
  - (f) where an environmental impact assessment is required under Regulation 3 of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (SI No 468 of 2012), include evidence of compliance with paragraph (3A) of the said Regulation 3, and
  - (g) **be accompanied by such fee**, if any, as may be payable in respect of such an appeal in accordance with regulations under *section 63*, and

shall be accompanied by such documents, particulars or other information relating to the appeal as the appellant considers necessary or appropriate.

**\*\*Please contact the ALAB offices in advance to confirm office opening hours.**

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## Appendix 2.

### Explanatory Note: EIA Portal Confirmation Notice/Portal ID number

The EIA Portal is provided by the Department of Housing, Local Government and Heritage as an electronic notification to the public of requests for development consent that are accompanied by an Environmental Impact Assessment Report (EIA Applications). The purpose of the portal is to provide information necessary for facilitating early and effective opportunities to participate in environmental decision-making procedures.

The portal contains information on EIA applications made since 16 May 2017, including the competent authority(ies) to which they are submitted, the name of the applicant, a description of the project, as well as the location on a GIS map, as well as the Portal ID number. The portal is searchable by these metrics and can be accessed at:

<https://housinggovie.maps.arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104ecbb206e7e5f84b71f1>

Section 41(1)(f) of the Fisheries (Amendment) Act 1997 requires that “*where an environmental impact assessment is required*” the notice of appeal shall show compliance with Regulation 3A of the Aquaculture Appeals (Environmental Impact Assessment) Regulations 2012 (S.I. 468/2012), as amended by the Aquaculture Appeals (Environmental Impact Assessment) (Amendment) Regulations 2019 (S.I. 279/2019) (The EIA Regulations)

Regulation 3A of the EIA Regulations requires that, in cases where an EIA is required because (i) the proposed aquaculture is of a class specified in Regulation 5(1)(a)(b)(c) or (d) of the Aquaculture (Licence Application) Regulations 1998 as amended – listed below, or (ii) the Minister has determined that an EIA was required as part of their consideration of an application for intensive fish farming, an appellant (that is, the party submitting the appeal to ALAB, including a third party appellant as the case may be) must provide evidence that the proposed aquaculture project that is the subject of the appeal is included on the EIA portal.

If you are a third-party appellant (that is, not the original applicant) and you are unsure if an EIA was carried out, or if you cannot find the relevant Portal ID number on the EIA portal at the link provided, please contact the Department of Housing, Local Government and Heritage for assistance before submitting your appeal form.

The Classes of aquaculture that are required to undergo an EIA specified in Regulation 5(1)(a)(b)(c) and (d) of the Aquaculture (Licence Application) Regulations 1998 S.I. 236 of 1998 as amended are:

- a) Marine based intensive fish farm (other than for trial or research purposes where the output would not exceed 50 tonnes);
- b) All fish breeding installations consisting of cage rearing in lakes;
- c) All fish breeding installations upstream of drinking water intakes;
- d) Other fresh-water fish breeding installations which would exceed 1 million smolts and with less than 1 cubic metre per second per 1 million smolts low flow diluting waters.

In addition, under Regulation 5(1) (e) of the 1998 Regulations, the Minister may, as part of his or her consideration of an application for intensive fish farming, make a determination under Regulation 4A that an EIA is required.