



## 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 **REGISTERED POST** or by hand to the ALAB offices at the following address: **Aquaculture Licences Appeals Board, Kilminchy Court, Dublin Road, Portlaoise, Co. Laois, R32 DTW5**

Name of Appellant (Block Letters) **DAVID O'SULLIVAN**

Address of Appellant

Eircode

Phone No.

Email address (enter below)

Mobile No.

Please note if there is any change to the details given above, the onus is on the appellant to ensure that ALAB is notified accordingly.

#### FEES

Fees must be received by the closing date for receipt of appeals	Amount	Tick
An appeal by an applicant for a license against a decision by the Minister in respect of that application	€380	
An appeal by the holder of a license against the revocation or amendment of that license by the Minister	€380	
An appeal by any other individual or organisation	€150	<input checked="" type="checkbox"/>
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)

Electronic Funds Transfer Details

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 must be received on or before 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.

SUBJECT MATTER OF THE APPEAL	
<p>Please accept this document as a formal appeal to your Board to overturn the decision to grant an aquaculture license to Woodstown Bay Shellfish Limited for bottom-culture mussel farming on a 23.1626 hectare site (T05-472A) located in the outer harbour of Kinsale Co. Cork.</p>	
Site Reference Number: - (as allocated by the Department of Agriculture, Food, and the Marine)	<b>T05-472A</b>
APPELLANT'S PARTICULAR INTEREST	
<p>Briefly outline your particular interest in the outcome of the appeal:</p> <p>I am most fortunate to live in this wonderful harbour town of Kinsale.</p> <p>I have enjoyed sailing, windsurfing, canoeing, snorkelling and scuba diving in the earmarked license location all my life and truly appreciate what an amazing asset and resource this outer harbour area is to the people of Kinsale and it's visitors.</p> <p>I have been involved in organising yacht racing in Kinsale since the 1980's. Every Thursday I lay and retrieve racing marks within the area earmarked for this bottom culture mussel farm. In addition to our weekly racing and local Regattas we hold one or two large events each year which bring a substantial number of international visitors to Kinsale.</p>	

**GROUNDINGS OF APPEAL**

State in full the grounds of appeal and the reasons, considerations, and arguments on which they are based) (if necessary, on additional page(s)):

The Minister, in his determination document, states that he considered the relevant legislation and the over 600 submissions made by interested parties. However, it appears that the Minister's decision overlooked many facts. The area earmarked for this bottom culture mussel farm license is unsuitable for many reasons including:

**1. Inadequate Environmental Assessment**

Although the determination document claims that there will be "no significant impacts on the marine environment", no independent environmental study is cited to support this assertion. The potential for biodiversity disruption, water quality deterioration, and seabed sediment alteration requires rigorous scientific investigation. Furthermore, cumulative impacts from existing and future aquaculture operations in the harbour appear to have not been sufficiently assessed, undermining the sustainability of the marine environment.

**2. The Privatisation of Kinsale Harbour.**

Under the Fisheries (Amendment) Act 1997, the Minister must consider the implications of aquaculture operations on navigation and the rights of other maritime users. Section 20 of the Act states "Except as permitted by or under this Act, if a person, by trespass, fishing or otherwise interferes with anything done or being done pursuant to a licence, and the interference is carried on without the permission of the licensee, then, notwithstanding the existence of any public right to fish, the person so interfering shall be guilty of an offence". If this license is granted the area will effectively become a "No Anchor Zone" (I and many others anchor and lay racing marks in this area every week). Existing recreational and leisure maritime activities will be curtailed for the exclusive benefit of Woodstown Bay Shellfish Limited. The granting of this license is effectively the privatisation of a wonderful public amenity. The Act also states – "The licensee have the exclusive right to do within the boundaries or limits specified in the license anything authorised by the license or necessary or expedient to conduct the operations specified in the license". Your board must consider in detail the implications of giving one single corporate entity exclusive rights over this important public amenity. This is a substantial body of water overlooked by James Fort and Charles Fort immediately adjacent to the adored Dock Beach, not some disused backwater. This part of Kinsale Harbour has been used by maritime traffic making their way to and from the town for centuries. It's important to note that local stakeholders such as water sports clubs, swimmers, divers and tourism operators have all stated that they have not been adequately consulted during the licensing process.

**3. Economic Risk to Existing Local Industries**

While the application anticipates economic benefit, there is no record of a Social Impact Assessment being undertaken. On what grounds does the applicant make the



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assumption of economic benefit. In its application it cites the potential employment of a further 6 people at its plant in Waterford. The determination does not consider the potential negative impact on established sectors such as tourism and traditional fisheries. A full Social Impact Assessment should be undertaken to assess both the potential loss of revenue to local businesses reliant on the harbour's current use and environmental integrity. There are many companies providing day trips around Kinsale Harbour, most of them relatively new to Kinsale, and they tell me they were not specifically consulted prior to this licence determination due to the substantial delay between the invitation for submissions and the notice advising the intention to grant the licence.

#### **4. Fouling of sea water intake systems in small boats.**

It's a well known fact that Mussel larvae infiltrate raw water intake systems in leisure and commercial vessels, particularly those moored long-term or infrequently used. This results in hidden blockages which can lead to engine overheating and failure. This risk has not been assessed in the license determination. The consequences may extend to increased lifeboat call-outs. No evidence is provided that the Harbour Master, Lifeboat, boat owners or marina operators were consulted, nor are any mitigation measures (e.g. buffer zones or monitoring protocols) detailed. This constitutes a serious procedural deficiency. I attach a photo of the sea water strainer on my boat which requires cleaning every year. If this license is granted my boat's strainer will need to be cleaned monthly. It's important to note that most small leisure boats do not have a strainer fitted.



#### **5. Unreasonable Delay in Determination**

The original application was submitted in December 2018. A decision was not issued until May 2025—more than six years later. Such an extended delay is at odds with the intent of the Fisheries (Amendment) Act 1997, which mandates that decisions be made



as soon as reasonably practicable. This delay risks relying on outdated environmental data and fails to reflect current stakeholder conditions. It raises legitimate concerns regarding the procedural fairness and validity of the decision.

## **6. Failure to Assess Impact on National Monument and Submerged Archaeological Heritage**

The proposed mussel farm site lies directly off James Fort, a protected National Monument (NIAH Ref: 20911215), and adjacent to the remains of the blockhouse guarding the estuary. This area is of significant historical and military importance, with likely submerged archaeological material including maritime infrastructure and possibly shipwrecks. The application fails to include any underwater archaeological assessment or consultation with the National Monuments Service or Underwater Archaeology Unit (UAU) of the Department of Housing, Local Government and Heritage. This represents a serious procedural omission. Dredging associated with bottom-culture mussel farming carries a high risk of disturbing or destroying archaeological material in situ. The failure to survey or evaluate these risks contradicts national heritage legislation and violates the precautionary approach enshrined in European environmental directives. We respectfully request that the license be suspended until a full archaeological impact assessment is carried out, including seabed survey and review by qualified maritime archaeologists in consultation with the UAU.

## **7. Sea Grass.**

Since the initial license application in 2018, new environmental data has come to light. Research led by Dr Robert Wilkes (University College Cork) national seagrass mapping work—which includes all major Irish coastal zones—strongly suggests that Kinsale Harbour may host these priority habitats, highlighting the need for a site-specific ecological survey. Seagrass is a priority habitat protected under the EU Habitats Directive due to its high biodiversity value, role in carbon sequestration, and function as a critical nursery habitat for fish and invertebrates. The mere presence of seagrass requires formal ecological assessment under EU law before any disruptive marine activity—particularly dredging—can be licensed.

The current license determination fails to acknowledge this discovery or to conduct any updated ecological survey. It instead relies on environmental data now over six years old. This is procedurally and scientifically unacceptable. An up-to-date, site-specific environmental impact assessment is necessary to ensure compliance with legal requirements and to safeguard a now-confirmed protected habitat.

This is an extract from an article in the Cork Echo – dated 21.06.25...

*Members of the Cork Sub Aqua Club recently completed a preliminary dive at a site earmarked for a controversial mussel farm in Kinsale Harbour, where a "vibrant and healthy" seagrass bed was discovered.*



*The dive, undertaken following the recently approved aquaculture licence, which will see the commercial cultivation of mussels in the area using bottom culture on the sub-tidal foreshore, saw nine members of the CSAC evaluate the area for the presence of seagrass.*

*The evaluation, undertaken by five divers and four snorkellers, took place at the 23-hectare site between the Dock Beach, James Fort, and Charles Fort.*

*Speaking to The Echo, ecologist and dive club member Tim Butter, said that dredging the area to cultivate mussels will "completely destroy" the existing seagrass habitat.*

*"There's a very vibrant and healthy seagrass bed out there," said Mr Butter.*

*"Currently, seagrass doesn't have legal protection in Ireland, but it is a really important habitat for lots of marine organisms. It forms quite a dense plant growth [and] a lot of commercial species like codlings and lobster will use it," he added "It also has an incredible capacity to absorb carbon dioxide from the atmosphere".*

## **8. Absence of Operating Agreement with the Port Authority**

Cork County Council has confirmed that no Operating Agreement was received from the applicant. Vessel activity, dredging schedule, licensing, method statements 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.

## **9. Misstatement Regarding Shellfish Waters Designation**

The application states that the site lies within Designated Shellfish Waters; this is factually incorrect. Cork County Council and the Kinsale Chamber of Tourism and Business have shown that the designated area is upriver of the Archdeacon Duggan Bridge. This misstatement undermines the reliability of the application and affects regulatory compliance with the Shellfish Waters Directive. The error should trigger re-evaluation of public health monitoring requirements and water quality impact.

In conclusion – the location earmarked for this bottom culture mussel farm is most unsuitable and I ask your Board to overturn the decision to grant this licence to Woodstown Bay Shellfish Limited.

I thank you for taking the time to read this submission.



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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

21<sup>st</sup> June 2025

**Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices**

**Payment of fees must be received on or before the closing date for receipt of appeals, otherwise the appeal will be deemed invalid.**

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



## 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 license or by the revocation or amendment of an aquaculture license 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.**





## 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://housinggov.ie/maps/arcgis.com/apps/webappviewer/index.html?id=d7d5a3d48f104ccbb206e7e5f84b71f1>

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 (License 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 (License 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.