

AQUACULTURE BOARD

25 JUN 2015

**ALAB**An Bord Achomhairc Um
Cheadúnais 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 **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)

Dr Joanne Blennerhassett (on behalf of Kinsale Scilly Environment Watch)

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



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



RL 0156 0134 11E

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

SUBJECT MATTER OF THE APPEAL	
<p>We are writing to formally appeal the decision to grant aquaculture licence T05-472A, for a mussel farm in Kinsale. We are a group of concerned local residents representing a wide variety of activities and opinions and we object to the granting of the licence on the basis set out below.</p> <p>We contend that the decision reached is flawed on the basis of procedural grounds and irregularities and inadequacies in the decision- making process, as explained below. This is specifically in relation to non-compliance with Ireland's legal obligations under the Aarhus Convention and associated public participation in the decision- making process and access to justice requirements in environmental matters; EU environmental law; and related Irish and European case law.</p> <p>The Aarhus Convention obliging public participation has not been complied with in the decision-making process in a number of ways, <i>inter alia</i>: full and complete information has not been given to the public nor has there been sufficient time or opportunity given to the public to allow their participation in the process. Furthermore, previous submissions made in relation to this licence application have not been responded to or acted upon.</p> <p>The decision reached is also in breach of the Precautionary Principle as outlined in more detail below.</p>	
<p>Site Reference Number: - (as allocated by the Department of Agriculture, Food, and the Marine)</p>	<p>T05-472A</p>
APPELLANT'S PARTICULAR INTEREST	
<p>Briefly outline your particular interest in the outcome of the appeal:</p> <p>Kinsale-Scilly Environment Watch are a group of concerned local residents united by a number of common interests in the outcome of the appeal;</p> <ul style="list-style-type: none"> • We all live in close proximity to the site of the proposed mussel farm and will be directly affected by any noise or odours if such arise, • We are regular recreational users of the waters immediately within and around the site in particular for swimming and therefore we will be directly affected by any changes in water quality should such arise, • Many of us are parents of children and/ or organisers of children's activities (including Kinsale Rowing Club, Kinsale Sailing Club and Kinsale Scouts) who are themselves regular recreational users of the waters immediately within and around the site • We are concerned about potential impacts on the quality of our local environment and the lack of information provided by either the developer or the licencing authority on the impacts, positive or negative, of the proposed mussel farm. <p>Kinsale-Scilly Environment Watch was established in 2019 to represent the interests of local residents and business owners. Members of Kinsale-Scilly Environment Watch are concerned about environmental issues such as water quality in Kinsale Harbour, and the potential use of the adjacent areas of the Harbour for shellfish culture. The relatively unique and unspoiled</p>	



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environment of the area is considered as an important asset, a residential and recreational amenity and a tourist attraction.

The aims of Kinsale-Scilly Environment Watch are:

- To maintain a watching brief on development proposals which may affect the environment of the area;
- To examine any development proposals which may affect the recreational and other sustainable uses of the nearby area of Kinsale Harbour;
- To raise awareness and exchange information about the historic and present association of Scilly with Kinsale Harbour and Kinsale Town;
- To co-operate with other local associations, such as Kinsale Chamber of Tourism and Business and the Kinsale Historic Association;
- To engage with the relevant planning authorities and state agencies in relation to development proposals which may impact the local environment of Scilly and the adjacent area of Kinsale Harbour.

Members of this group;

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GROUND OFS 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)):

We are appealing the decision to grant the licence on the following grounds:

1. Non-Compliance with Aarhus Convention Principles

Ireland is a Party to the **UNECE Aarhus Convention** (ratified in 2012), which guarantees three fundamental rights in environmental decision-making:

Access to information

Public participation in environmental decision-making

Access to justice

These rights are incorporated into EU law via:

Directive 2003/4/EC (Access to Environmental Information)

Directive 2003/35/EC (Public Participation)

EIA Directive 2011/92/EU, amended by **Directive 2014/52/EU**

Ireland has been repeatedly criticised, including by the **Aarhus Convention Compliance Committee (ACCC)** and the **European Commission**, for ongoing failures in implementing these obligations.

The Aarhus Convention is a legal framework with associated financial penalties should the committee adjudicate a country has breached its articles. Those countries who are found to have breached the convention also risk significant reputational damage. The Irish Taoiseach Michael Martin stated on June 8th 2025 at the United Nations Ocean Conference that Ireland's policy is to be a leader in "*prioritising maritime policy and cover areas such as sustainable economic activity in coastal communities*".

As the licensing decision being appealed in this letter was granted without appropriate consultation or environmental impact assessment, it would suggest Ireland has again not adhered to the Aarhus Convention. Such a finding will damage Ireland's credibility and leadership of maritime policy amongst peer nations. Also, as mentioned in our previous submission, Ireland has inadequately transposed the Aarhus Convention into Irish law.

2. Procedural Deficiencies in Licence T05-472A

a. Inadequate Access to Environmental Information

The licence was granted with **limited and inaccessible information** on cumulative environmental impacts, including on protected marine habitats, local biodiversity, and water quality.

There was no Environmental Impact Assessment (EIA), despite potential impacts on nearby **Natura 2000 sites**, contravening obligations under the **Habitats Directive (92/43/EEC)** and **Birds Directive (2009/147/EC)**.

b. Deficient Public Participation

The public consultation was **not meaningfully inclusive**: it was limited in scope, poorly publicised, and too short to ensure genuine participation by affected communities and stakeholders.

This violates Article 6 of the Aarhus Convention and its transposition into EU law.

c. Impaired Access to Justice

There is **no clear, accessible process** for stakeholders or the public to challenge the granting of this licence.

Ireland has been found **non-compliant by the ACCC in Case ACCC/C/2008/32**, which identified a systemic failure to provide fair and equitable access to justice in environmental matters.

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The consultation process undertaken by the Aquaculture and Foreshore Management Division of the Department of Agriculture, Food and the Marine was deficient in all of the above respects and the submission that we previously made on behalf of the Kinsale- Scilly Environment Watch did not receive a response. This renders the consultation process invalid, as supported by the very recent judgment delivered by Mr. Justice Michael Quinn on 16 June, in the joined cases of **North Westmeath Turbine Action Group & Ors -v- An Bord Pleanála & Ors, and Peter Sweetman -v- An Bord Pleanála & Ors. [Record No. 2019/297 JR] and [Record No. 2019/305 JR]**. Mr Justice Michael Quinn held that giving members of the public the opportunity to make observations on the full extent of a proposed wind farm, including the grid connection, is so vital to ensuring compliance with the EIA Directive:

*"The decision maker performing an EIA is required by the Directive to be informed not only by his own expertise, by the expertise of the developer's professional experts, and the expertise and submissions of statutory consultees, **but also to have the benefit of observations by members of the public**. No matter how professional, expert or comprehensive are the reports and other information submitted, or how skilled the authors and readers of such reports are, if the assessing authority is deprived of the possibility of submissions by the public its assessment is made without the benefit of contributions by persons having direct knowledge of the location of the project and likely to be most directly affected. This is why public consultation is at the heart of the Directive. Therefore, **an assessment process of which the public have not been notified, does not comply with the Directive**".*
(paragraph 597, page 184 decision)

Mr. Justice Quinn was highly critical of any attempt by a State body to make a decision without having done a proper public consultation. The judge's decision hinged on the perspective of ensuring adequate public consultation, as demonstrated in paragraphs 589 to 599 of his judgement, on pages 183 to 185.

Previous decisions have stated that the Environmental Impact Statement and, most importantly, the Natura Impact Statement must be clear and definitive and there must be no lacunae and there must be solid evidence that the development proposed will have no adverse effect on any SAC (Special Area of Conservation) or SPA (Special Protected Area). As highlighted in the **Sweetman Case** below, the development must describe everything, in that case detailed plans and particulars.

3. Relevant Legal Precedents and Findings

Aarhus Convention Compliance Committee (ACCC)

Case ACCC/C/2008/32 (Ireland): Found Ireland in breach for lack of proper access to justice, particularly regarding planning and environmental licensing.

Case ACCC/C/2010/53: Highlighted Ireland's failure to ensure effective public participation in projects with environmental impacts.

Irish and EU Case Law

Sweetman v An Bord Pleanála (CJEU, C-258/11): Emphasised that any project with potential effects on a Natura 2000 site must undergo rigorous scrutiny and that public participation must be meaningful.

An Taisce v An Bord Pleanála [2015] IEHC 633: Reinforced the requirement that EIA procedures must be transparent and inclusive.

Case C-243/15 (LZ II): Confirmed that a lack of public access to the full content of an environmental permit decision violates EU law.

North Westmeath Turbine Action Group & Ors -v- An Bord Pleanála & Ors, and Peter Sweetman -v- An Bord Pleanála & Ors. [Record No. 2019/297 JR] and [Record No. 2019/305 JR].

4. Failure by the licencing authority to require an Environmental Impact Assessment or Environmental Impact Screening

It would appear that the information that this decision was based on was deficient in the round. According to the application materials published online by the Department of Agriculture, Food and the Marine ([Aquaculture/Foreshore Licence Applications - Cork](#)), the studies undertaken to consider the impacts of the development looked exclusively at the potential for ecological impacts on Natura 2000 Sites and the potential for impacts on protected species. There would appear to have been no consideration given to the other environmental factors that need to be considered given the nature, scale and location of the development.

However, according to guidance issued by the Office of the Planning Regulator in June 2021, development consent for projects, which are below the threshold for Environmental Impact Assessment but which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out (reference; [Guidance on Environmental Impact Assessment Screening](#)).

It seems clear that the sensitivity of the environment in terms of its amenity use, outstanding natural beauty and archaeological significance has not been considered, nor have a number of potential impacts of this development been assessed in any way, including:

- Water Quality: the risk of pollution/ contamination and impacts on beach-users, swimmers, water-users have not been assessed;
- Cultural Heritage: the risk of impacts on underwater archaeology, in such close proximity to two national monuments of international significance, has not been assessed;
- Landscape and Visual Impacts: the risk of potential changes to the visual character of the area has not been assessed;
- Socio-economic Impacts: the potential impacts on the local economy, and specifically employment in the local tourism and hospitality industry which is partly based on the scenic value of the harbour and amenity use of areas immediately adjacent to the proposed development, has not been assessed.

5. Failure to Apply the Precautionary Principle

The decision to grant this licence is illegal on the basis that it represents a failure to apply the precautionary principle, as required under both Irish and EU environmental law. The precautionary principle is enshrined in **Article 191(2) of the Treaty on the Functioning of the European Union (TFEU)**, which governs environmental protection within the EU. It provides that "Union policy on the environment shall aim at a high level of protection... It shall be based on the precautionary principle." This principle is binding on Member States, including Ireland, and on all public authorities making decisions which may have environmental impacts.

The precautionary principle requires that where there is scientific uncertainty regarding the potential for serious or irreversible environmental harm, decision-makers must err on the side of environmental protection, even where conclusive scientific evidence is not yet available. In other words, the absence of full certainty must not be used as a justification for inaction or

approval where the stakes are high.

EU Case Law supporting this position:

Case C-127/02 (Waddenvereniging and Vogelbeschermingsvereniging v Staatssecretaris van Landbouw, Natuurbeheer en Visserij)

The Court of Justice of the European Union (CJEU) held that where there is "reasonable doubt" as to the absence of adverse effects on a protected site, the activity must not be authorised unless it is proven beyond reasonable scientific doubt that no harm will occur.

Case C-243/15 (LZ II)

The CJEU reinforced that even minor environmental uncertainties in sensitive sites or habitats require precautionary rejection or stringent assessment prior to approval.

National Precedents – Irish Context:

Sweetman v An Bord Pleanála [2014] IESC 35, the Irish Supreme Court acknowledged the application of the precautionary principle and accepted that where there is doubt about the environmental consequences of a development, authorisation must be withheld unless it can be established with scientific certainty that no adverse impact will result.

The Friends of the Irish Environment v The Government of Ireland [2020] IESC 49

judgment further highlighted the obligation on public authorities to take environmental duties seriously.

In the case of the mussel farm licence T05-472A, there have been multiple breaches of this principle:

The proposed development introduces physical structures, ongoing ecological disruption, and potential nutrient loading into a delicate marine area with existing ecological, recreational, and landscape value.

No clear or comprehensive Environmental Impact Assessment (EIA) or Appropriate Assessment (AA) has conclusively ruled out significant impacts.

There is ongoing scientific uncertainty about the cumulative and long-term effects of aquaculture in semi-enclosed coastal areas such as Kinsale Harbour.

Under the precautionary principle, these uncertainties should have triggered a more robust refusal or suspension of the licence, pending conclusive demonstration that no serious harm would arise. The decision to grant the licence without addressing these uncertainties constitutes a breach of the principle and a failure of duty under both Irish and EU law.

Request for Review and Corrective Action

In light of these substantive concerns, I respectfully request that the Aquaculture License Appeals Board:

- **Revoke or suspend the granting of licence T05-472A**, pending a full review.
- **Commissions (or requires the developer to commission)** an independent, expert, detailed Environmental Impact Assessment to address (but is not restricted to) Benthic ecology, Biodiversity, Water resources, Landscape and visual, Cultural heritage, Socio-economics, Commercial fisheries;
- Requires a full Social Impact Assessment that includes the potential impact on existing industries;
- Undertakes a reassessment of public access impacts, with adequate local consultation;
- Reviews the potential for indirect impacts on nearby protected sites under Natura 2000.

- Carries out an Archaeological Impact Assessment, including seabed survey and review by qualified maritime archaeologists in consultation with the UAU.
- **Re-open a meaningful public consultation process**, with sufficient notice, outreach, and time for response.
- **Establish and publicise an accessible appeal mechanism**, in compliance with Aarhus and EU law.

Conclusion

As stated above the public consultation was not meaningfully inclusive: it was limited in scope, poorly publicised, and too short to ensure genuine participation by affected communities and stakeholders and, therefore, deficient.

In addition, both the precautionary principle and the public participation requirements under the Aarhus Convention provide strong legal foundations for this appeal. The precautionary principle demands that, in the face of scientific uncertainty and the risk of serious environmental harm, the competent authority must withhold approval unless it can be demonstrated with a high degree of certainty that no such harm will result.

The Aarhus Convention requires effective public participation in environmental decision-making, timely access to environmental information, and access to justice. These rights ensure that decisions like this one are made transparently and accountably, with full consideration of community concerns and potential environmental risks. Failure to comply with the Aarhus and EU legal obligations as well as the Precautionary Principle not only undermines environmental protection but exposes Ireland to continued legal risk.

We note the comments of Mr Justice Meenan when adjudicating a case taken by Woodstown Bay Shellfish et al (company the subject of this letter) against the Irish state, **Irish Water v Woodstown Bay Shellfish Ltd IHEC 223** *"the fact remained that for many years the State permitted Northern Ireland-registered vessels to fish for mussel seed unlawfully to the detriment of the industry"* (2019). There is a serious risk that by awarding this licence the community will not be *"well served by the State"* when deciding to award this licence and the deleterious effects of doing so are irreversible. In summary, the main procedural flaw is that the decision has not been made in full accordance with the law, as it should have been. As the environmental issues and concerns have been covered in detail by other appeals lodged in relation to the granting of this licence, we are highlighting problems with the decision-making process, which must be reviewed, rather than the merits of the decision itself.

Failure to comply with the correct decision-making procedure has clearly occurred in the granting of this licence. Accordingly, the granting of this licence without proper adherence to these legal standards constitutes a material error, rendering it invalid and it should therefore be set aside.

We trust the Department will take this appeal seriously and act in accordance with both national and international law.

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	24.06.25
<p>Please note that this form will only be accepted by REGISTERED POST or handed in to the ALAB offices</p> <p>Payment of fees must be received on or before the closing date for receipt of appeals, otherwise the appeal will be deemed invalid.</p>			

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=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 (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.